

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 7 MESSAGE THERAPISTS
PART 14 COMPLAINTS

16.7.14.1 ISSUING AGENCY: Regulation and Licensing Department, Massage Therapy Board.
[16.7.14.1 NMAC - Rp 16.7.14.1 NMAC, 11/15/2019]

16.7.14.2 SCOPE: This part applies to licensees, registrants, massage therapists, registered massage therapy schools and applicants for licensure or registration.
[16.7.14.2 NMAC - Rp 16.7.14.2 NMAC, 11/15/2019]

16.7.14.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Massage Therapy Practice Act, Subsections H and K of Section 61-12C-8 NMSA 1978, and Section 61-12C-24 NMSA 1978.
[16.7.14.3 NMAC - Rp 16.7.14.3 NMAC, 11/15/2019]

16.7.14.4 DURATION: Permanent.
[16.7.14.4 NMAC - Rp 16.7.14.4 NMAC, 11/15/2019]

16.7.14.5 EFFECTIVE DATE: November 15, 2019 unless a different date is cited at the end of a section.
[16.7.14.5 NMAC - Rp 16.7.14.5 NMAC, 11/15/2019]

16.7.14.6 OBJECTIVE: This part is to establish the procedures for processing complaints and taking disciplinary action against licensed massage therapists, registered massage therapy schools, and applicants for licensure or registration, for violation of the Massage Therapy Practice Act or any provisions of 16.7 NMAC.
[16.7.14.6 NMAC - Rp 16.7.14.6 NMAC, 11/15/2019]

16.7.14.7 DEFINITIONS: (Refer to 16.7.1.7 NMAC).
[16.7.14.7 NMAC - Rp 16.7.14.7 NMAC, 11/15/2019]

16.7.14.8 GENERAL PROVISIONS:
 A. A complaint may be initiated in writing by any person.
 B. Complaints shall be legible, either printed in black ink or typed.
 C. Complaints shall contain factual allegations, constituting the alleged violations of any provisions of the Massage Therapy Practice Act and 16.7 NMAC.
[16.7.14.8 NMAC - Rp 16.7.14.8 NMAC, 11/15/2019]

16.7.14.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:
 A. The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).
 B. Upon receipt of a complaint the board's designee will:
 (1) log in the date the complaint was received;
 (2) determine whether the respondent is licensed, registered or an applicant for licensure or registration with the board;
 (3) assign a complaint number and create an individual file; complaint numbering will begin with the last two digits of the year in which the complaint is filed, followed by the month, and will then continue sequentially (e.g., 96-01-001 first = complaint filed in January 1996);
 (4) send the complainant written acknowledgment of receipt of the complaint;
 (5) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).
[16.7.14.9 NMAC - Rp 16.7.14.9 NMAC, 11/15/2019]

16.7.14.10 COMPLAINT COMMITTEE:

A. The board chair will appoint a complaint committee consisting of at least one professional member of the board, who will chair the committee. The board chair may also appoint to the complaint committee the board administrator or a complaint manager.

B. The complaint committee will handle complaints in a confidential manner as required by law.

C. The complaint committee will review all complaints received by the board and make recommendations for disposition of the complaint to the full board in executive session.

D. No complaint committee meeting will be held without the presence of the professional board member.

E. A complaint committee member who believes they are not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate; another professional member will be appointed by the chair to serve as committee chair for the complaint being considered.

F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint.

G. The complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

H. If the complaint committee determines that further information is needed, it may issue investigative subpoenas pursuant to the Uniform Licensing Act; it may employ an investigator, experts, or other persons whose services are determined to be necessary to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons without prior approval of the board. The board administrator will determine budgetary availability and will contract for investigative services.

I. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[16.7.14.10 NMAC - Rp 16.7.14.10 NMAC, 11/15/2019]

16.7.14.11 BOARD ACTION:

A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case will be closed.

B. The board's designee will send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

C. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action.

D. The board's designee will forward a complete copy of the complaint committee's report, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

E. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referring the complaint to district attorneys for prosecution of persons alleged to be practicing massage therapy without a proper license or registration.

F. Any board member who believes that they are not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate in the decision to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

G. Members of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than by making a recommendation to the board whether to issue a notice of contemplated action, and will not participate in the hearing, deliberation, or decision of the board.

[16.7.14.11 NMAC - Rp 16.7.14.11 NMAC, 11/15/2019]

16.7.14.12 SETTLEMENT AGREEMENT:

A. The board may enter into a settlement agreement with the licensee or registrant as a means of resolving the complaint.

B. Any proposed settlement agreement must be approved by the board, and must also be approved by the respondent, upon a knowing and intentional waiver by the respondent of their right to a hearing as provided by the Uniform Licensing Act.

C. The settlement agreement must be signed by either the licensee's attorney or the licensee must acknowledge that he or she has been advised to seek the advice of an attorney.
[16.7.14.12 NMAC - Rp 16.7.14.12 NMAC, 11/15/2019]

16.7.14.13 NOTICE OF CONTEMPLATED ACTION:

- A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.
- B.** The board chair, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.
- C.** The hearing officer may make such orders as he or she determines may be necessary to implement the authority conferred by Subsection B of 16.7.14.13 NMAC above, including but not limited to discovery schedules, pleading schedules, and briefing schedules.
- D.** No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.
- E.** Licensees and registrants who have been found culpable and sanctioned by the board will be responsible for the payments of all costs of the disciplinary proceedings.
- F.** Any license or registration, including a wall certificate, issued by the board and subsequently suspended or revoked will be promptly returned to the board office, but no later than 30 days of receipt by the licensee or registrant of the board's order suspending or revoking the license.
[16.7.14.13 NMAC - Rp 16.7.14.13 NMAC, 11/15/2019]

HISTORY OF 16.7.14 NMAC: [RESERVED]

History of Repealed Material: 16.7.14 NMAC - Massage Therapists - Complaints filed 5/29/2001, Repealed effective 11/15/2019.

Other History:

16.7.14 NMAC, Massage Therapists - Complaints filed 5/29/2001 was replaced by Massage Therapists - Complaints effective 11/15/2019.