

This is an amendment to 16.14.11 NMAC, Section 11, effective 2/9/2022.

16.14.11.11 DISCIPLINARY GUIDELINES: In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the Nutrition & Dietetics Act or the board's regulations. The following shall subject the licensee to disciplinary action by the board:

A. Fraud or deceit in procuring or attempting to procure a license to practice as a dietitian or nutritionist

B. Knowingly practicing as dietitian or nutritionist or using any designation with his/her name tending to imply, without a valid license, that he/she is a nutritionist/dietitian; or knowingly aiding, assisting, procuring, advising, or encouraging any unlicensed person to practice as a nutritionist/dietitian or use any designation with his/her name tending to imply that he/she is a nutritionist/dietitian without a valid license.

C. Conviction by a court of competent jurisdiction of any of the following disqualifying felony criminal convictions:

(1) homicide, involuntary or voluntary manslaughter;

(2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

(3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

(6) crimes involving child abuse or neglect, child endangerment;

(7) crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property.

(8) crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds

D. This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

E. Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise

F. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

G. In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or sealed;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

H. If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing.
[16.14.11 NMAC – N, 2/9/2022]