

This is an amendment to 16.26.7 NMAC, Sections 7 and 8, effective 2/10/2022

16.26.7.7 DEFINITIONS: ~~[RESERVED]~~ disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.26.7.7 – N, 2/10/2022]

16.26.7.8 DISCIPLINARY GROUNDS AND DENIAL OF LICENSURE: In accordance with the provisions of the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or licensee has violated the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the board’s rules. The following ~~shall~~ may subject the applicant or licensee to disciplinary action by the board.

A. Engaging in unprofessional conduct: Unprofessional conduct includes, but is not limited to, the following:

(1) violations of the principles of ethics or the ethical proscriptions as set forth in board regulations concerning its Code of Ethics (16.26.9 NMAC);

~~[(2) violating a provision of the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act including practicing without a license;]~~

~~(2) for an audiologist or dispensing otorhinolaryngologist to accept a case referred from a hearing aid dispenser and not return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.~~

~~[(3) committing any of these crimes, for which a certified copy of the record of conviction shall be conclusive evidence of conviction;~~

~~(a) a felony;~~

~~(b) a misdemeanor substantially related to the practice of speech language pathology, audiology or hearing aid dispensing or a misdemeanor involving moral turpitude; and~~

~~(c) violating the Controlled Substances Act (Sections 30-31-1 to 30-31-41 NMSA 1978);~~

~~(4) attempting to practice with a license, certificate or registration to practice speech-language pathology, audiology or hearing aid dispensing under a revoked, suspended or denied license from another jurisdiction, territory or possession of the United States or another country for actions similar to acts described within this section.~~

~~(5) for an audiologist or dispensing otorhinolaryngologist, accepting a referral from a hearing aid dispenser but failing to return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.~~

~~(6) fraud or deceit in procuring or attempting to procure a license;~~

~~(7) selling or fitting the first hearing aid of a child under 16 years of age who has not been examined and cleared for the hearing aid by an otolaryngologist or a dispensing audiologist who has earned certification by a national professional association;~~

~~(8) selling or fitting a hearing aid on a person who has not been tested, except for replacement aids;~~

~~(9) using untruthful or misleading advertising;~~

~~(10) misrepresenting the license or applicant’s status as being a medical doctor;~~

~~(11) becoming addicted to a habit forming drug or other substance to such a degree as to render the license or applicant unfit to practice;~~

~~(12) willfully or negligently practicing beyond the scope of the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.]~~

B. Engaging in acts that constitute incompetence: Incompetence includes, but is not limited to, the following:

(1) failure to possess the knowledge, apply the skill or provide the care required by generally accepted standards of the professions of speech-language pathology, audiology or hearing aid dispensing; or

(2) violation of the principles of ethics II or the ethical proscriptions thereunder as set forth in board regulations relating to professional competence (Subsections D and E of 16.26.9.8 NMAC);

(3) a finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.

~~[C. — A finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.]~~

~~[D.]~~ **C.** Aiding or abetting the practice by a person not licensed by the board. Aiding or abetting the practice of speech language pathology by a person not licensed by the board includes, but is not limited to, the following:

~~[(1) — Authorizing or otherwise permitting a speech language paraprofessional or assistant working under the licensee's supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.~~

~~(2) — Failing to ensure that a speech language paraprofessional or assistant working under the licensee's supervision follows the plan of care; and~~

~~(3) — Authorizing or otherwise permitting an apprentice in speech language pathology working under the licensee's supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the board's rules.]~~

(1) A licensee shall not authorize or otherwise permit a speech language paraprofessional or assistant working under his or her supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.

(2) A licensee shall ensure that a speech language paraprofessional or assistant working under his or her supervision follows the plan of care.

(3) A licensee shall not authorize or otherwise permit an apprentice in speech-language pathology working under his or her supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the board's rules and shall ensure that the apprentice only engages in those duties authorized in Subsection D of 16.26.2.18 NMAC of the board's rules.

~~[E.]~~ **D.** Failing to deliver to any person supplied with a hearing aid a receipt which contains the following information:

- (1) licensee's license number and signature;
- (2) the sponsor's/supervisor's signature approving of the fitting if the seller is a clinical fellow, graduate student or trainee;
- (3) address of the licensee's regular place of business;
- (4) make and model of the hearing aid;
- (5) full financial terms of the sale;
- (6) statement as to whether the hearing aid is new, used or reconditioned;
- (7) statement that the purchaser was advised that the licensee was not a licensed physician

and that the examination and recommendation was made as a hearing aid dispenser, audiologist, clinical fellow, trainee or graduate student and not as a medical diagnosis or prescription;

- (8) terms of guarantee, if any.
- (9) hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems.

E. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

- (1) homicide or manslaughter;
- (2) trafficking, or trafficking in controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, use of force or threats of force against school employees or healthcare workers, arson, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, failure to register as a sex offender, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, tax fraud or evasion, forgery, embezzlement, credit card fraud, misuse of public funds or benefits, making false statements, offering or soliciting an illegal kickback or government action, tampering with public records, perjury;

(8) escape from a custody or possession of deadly weapons in custody;

(9) practicing healthcare without a license;

(10) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

F. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection E of this rule.

G. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

H. 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 Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices 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 disqualifying criminal convictions listed in Subsection A of this rule.

I. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding 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 pardoned;

(3) a juvenile adjudication; or

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

[11/7/98, 11/27/99, 12/5/99; 16.26.7.8 NMAC - Rn & A, 16 NMAC 26.7.8, 2/3/06; A, 11/28/2017; A, 2/10/2022]

HISTORY OF 16.26.7 NMAC: [RESERVED]