

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 14 NUTRITION AND DIETETIC PRACTITIONERS
PART 11 DISCIPLINARY PROCEEDINGS

16.14.11.1 ISSUING AGENCY: Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico.
[16.14.11.1 NMAC - Rp, 16 NMAC 14.11.1 NMAC, 8/1/2011]

16.14.11.2 SCOPE: All individuals licensed or applying for licensure to practice as a dietitian, nutritionist or nutrition associate in the state of New Mexico, as well as members of the public who wish to submit a complaint to the board.
[16.14.11.2 NMAC - Rp, 16 NMAC 14.11.2, 8/1/2011]

16.14.11.3 STATUTORY AUTHORITY: Section 61-7A-12 NMSA 1978 (Laws of 1996 and 1993 Repl. Pamp.).
[16.14.11.3 NMAC - Rp, 16 NMAC 14.11.3, 8/1/2011]

16.14.11.4 DURATION: Permanent.
[16.14.11.4 NMAC - Rp, 16 NMAC 14.11.4, 8/1/2011]

16.14.11.5 EFFECTIVE DATE: 8/1/2011 unless a later date is cited at the end of a section.
[16.14.11.5 NMAC - Rp, 16 NMAC 14.11.5, 8/1/2011]

16.14.11.6 OBJECTIVE: To establish procedures and guidelines for handling complaints consistent with the Uniform Licensing Act.
[16.14.11.6 NMAC - Rp, 16 NMAC 14.11.6, 8/1/2011]

16.14.11.7 DEFINITIONS: [RESERVED]
[16.14.11.7 NMAC - Rp, 16 NMAC 14.11.7, 8/1/2011]

16.14.11.8 COMPLAINT PROCEDURE:

- A.** Disciplinary proceedings may be instituted by the board upon the receipt of a sworn complaint of any person, including any member of the board.
- B.** After determining jurisdiction, the board shall cause an investigation to be made.
- C.** In accordance with the provisions of the Uniform Licensing Act, the board may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated the provisions set forth in the Nutrition and Dietetics Practice Act or board rules and regulations.

[16.14.11.8 NMAC - Rp, 16 NMAC 14.11.8, 8/1/2011]

16.14.11.9 DELEGATION OF AUTHORITY: The authority of the New Mexico nutrition and dietetic practice board to refer 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 the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13, for administrative prosecution is delegated to the administrator of the board. This section shall 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.
[16.14.11.9 NMAC - N, 8/1/2011]

16.14.11.10 SAVINGS CLAUSE: Neither the action or inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.
[16.14.11.10 NMAC - Rp, 16 NMAC 14.11.10, 8/1/2011]

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]

HISTORY OF 16.14.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:
 Rule 8, Disciplinary Proceedings, filed 3/8/1993.

History of Repealed Material:

16 NMAC 14.11, Disciplinary Proceedings, filed 8/19/1996 - Repealed effective 8/1/2011.