

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS
PART 13 COMPLAINT AND DISCIPLINARY PROCEDURES

16.2.13.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[7-1-96; 16.2.13.1 NMAC - Rn, 16 NMAC 2.13.1, 11-6-00]

16.2.13.2 SCOPE: All licensees, applicants, temporary licensees, applicants for temporary licensure, externs, educational programs and applicants for approval of educational programs.
[7-1-96; 16.2.13.2 NMAC - Rn & A, 16 NMAC 2.13.2, 11-6-00; A, 12-1-01]

16.2.13.3 STATUTORY AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 17, NMSA 1978.
[7-1-96; 16.2.13.3 NMAC - Rn, 16 NMAC 2.13.3, 11-6-00]

16.2.13.4 DURATION: Permanent.
[7-1-96; 16.2.13.4 NMAC - Rn, 16 NMAC 2.13.4, 11-6-00]

16.2.13.5 EFFECTIVE DATE: July 1, 1996, unless a later date is cited at the end of a section.
[7-1-96, A, 8-31-98; 16.2.13.5 NMAC - Rn & A, 16 NMAC 2.13.5, 11-6-00]

16.2.13.6 OBJECTIVE: This Part defines the creation of the complaint committee, the complaint committee chairperson and the complaint manager, and describes the procedures for the filing of a complaint, the receipt of a complaint at the board's office, the review of the complaint by the complaint committee, the review of the complaint, if necessary, by the board and disciplinary proceedings.
[7-1-96; 16.2.13.6 NMAC - Rn, 16 NMAC 2.13.6, 11-6-00]

16.2.13.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).
[7-1-96; 16.2.13.7 NMAC - Rn, 16 NMAC 2.13.7, 11-6-00; A, 12-1-01; A, 02-15-05]

16.2.13.8 INITIATING A COMPLAINT:

- A. A complaint may be initiated by any person by a telephone call, a written complaint, or an in person complaint presented to any board member or the board's administrator. The board's administrator or complainant shall prepare a complaint form. This form shall be available at the office of the board's administrator.
- B. The provisions of Subsection A above notwithstanding, no formal disciplinary proceeding against any person may be instituted without a written, signed complaint.
- C. The board's administrator shall maintain a written log of all complaints received that records the following: the date of the complaint; the name, address and telephone number of the complaining party (complainant); the name of the subject of the complaint (respondent); the method by which the complaint was made (e.g., telephone, letter, etc.); and other pertinent data as the board may direct.
[7-1-96, A, 8-31-98; 16.2.13.8 NMAC - Rn & A, 16 NMAC 2.13.8, 11-6-00; A, 12-1-01]

16.2.13.9 PROCEDURES FOR PROCESSING A COMPLAINT:

- A. The board's administrator, or any member of the board who may be appointed by the board's chairperson, will act as the complaint manager for the procedures outlined below.
- B. Upon receipt of a written signed complaint, or upon the board's action initiated by a majority vote of the board which is reduced to a written statement based on reasonable ground to believe that the Act or Rules may have been or are being violated, the complaint manager shall:
 - (1) Log in the date of receipt of the initial complaint.
 - (2) Determine whether the respondent is a applicant, temporary licensee, applicant for temporary licensure, extern, extern applicant, educational program, or applicant for approval of an educational program.
 - (3) Assign a complaint number and create an individual file. Complaint numbering shall begin with the last two digits of the year in which the complaint is filed, and shall then continue sequentially (e.g., 95-001).
 - (4) Forward the complaint to the complaint committee chairperson.
 - (5) Within seven (7) working days of receipt of the written complaint, send written acknowledgment of receipt of the complaint to the complainant.

[7-1-96; 16.2.13.9 NMAC - Rn & A, 16 NMAC 2.13.9, 11-6-00; A, 12-1-01]

16.2.13.10 REVIEW BY THE COMPLAINT COMMITTEE:

A. The complaint committee chairperson and complaint manager will comprise the complaint committee, and will review all written, signed complaints filed against a respondent. The complaint committee shall provide the respondent with a copy of the complaint within thirty (30) days of receipt of the complaint, unless the complaint committee reasonably determines that disclosure of the complaint at that time will substantially and materially impair the integrity or efficacy of the investigation. Nondisclosure at the initial stage of the complaint process shall be the exception, rather than the rule.

B. The respondent shall file a written response to the complaint that shall be received in the board's office within thirty days of the postmarked date on which complaint notice was mailed to the respondent, and shall be advised that he or she is required to provide all documents and exhibits in support of his or her position, unless it has been determined that disclosure of the complaint will substantially and materially impair the integrity or efficacy of the investigation, pursuant to Subsection A of 16.2.13.10.A NMAC (Subsection 10.A. of Part 13 of the Rules), in which case the investigation shall proceed without notice to the respondent at the initial stage.

C. If the complaint committee has determined that it is in the best interest of the investigation to withhold disclosure of the complaint during the initial stage of the investigation, pursuant to Subsection A of 16.2.13.10.A NMAC (Subsection 10.A. of Part 13 of the Rules), a copy of the complaint shall be provided to the respondent no later than at the time of the issuance of an NCA, if any.

D. If the complaint committee determines that further information is needed, it may issue investigative subpoenas, or employ an investigator, expert, or other person whose services are determined to be necessary in order to assist in the processing and investigation of the complaint.

E. Upon completion of the investigation, the complaint committee will present a summary of the case to the board, and will make recommendations for action. The summary shall not identify any of the parties by name. [7-1-96, A, 8-31-98, A, 7-3-99; A, 2-17-00; 16.2.13.10 NMAC - Rn & A, 16 NMAC 2.13.10, 11-6-00; A, 12-1-01]

16.2.13.11 REVIEW BY THE BOARD:

A. The complaint committee shall present its report and recommendation(s) to the board. The matter shall be referred to only by the assigned case number, and the identities of the parties shall not be disclosed to the board until and unless an NCA is issued. The complaint committee's report shall address issues regarding the statute of limitations and the board's subject matter jurisdiction.

B. After the complaint committee's report has been considered by the board, if the board determines there is not sufficient evidence or cause to issue an NCA, the case will be closed. A letter from the board will be sent, postmarked within thirty (30) days of the date of the board's decision, to both the complainant and respondent. The letter will state the board's action and the reasons for its decision.

C. After the complaint committee's report has been considered by the board, the board may vote to issue an NCA if it determines there is sufficient evidence that, if not rebutted or explained, will justify the board taking disciplinary action.

D. If the board votes to issue an NCA, a complete copy of the complaint committee's file, including exhibits, shall be forwarded to the attorney general's office for assignment of a prosecuting attorney and the Attorney General's decision as to whether there is a sufficient basis to prosecute.

E. At any time the board may enter into a settlement agreement with the respondent as a means of resolving a complaint. Any proposed settlement agreement must be approved by the board and by the respondent upon a knowing and intentional waiver by the respondent of his or her right to a hearing as provided by the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[7-1-96, A, 8-31-98, A, 5-15-99; 16.2.13.11 NMAC - Rn & A, 16 NMAC 2.13.11, 11-6-00; A, 12-1-01]

16.2.13.12 DISCIPLINARY PROCEEDINGS:

A. The chairperson of the board, or his or her designee, shall serve as chief officer for the disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The chief officer shall be fully authorized to rule on non-dispositive matters on behalf of the full board, including, but not limited to matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, issuance of subpoenas, uncontested motions to change venue, motions to excuse a member filed pursuant to Section 61-1-7(C)NMSA 1978, and discovery and briefing schedules.

B. No party shall engage in ex-parte communications with the chief officer or any member of the board in any pending matter under investigation or in which an NCA has been issued.

C. All disciplinary proceedings shall be conducted in accordance with the Uniform Licensing Act. [7-1-96; A, 8-31-98; A, 5-15-99; 16.2.13.12 NMAC - Rn, 16 NMAC 2.13.12, 11-6-00; A, 12-1-01]

History of 16.2.13 NMAC:

Pre-NMAC History: None

History of Repealed Material: [Reserved]

History: Material in this part was derived from the previously filed with the commission of public records - state records center and archives as:

16 NMAC 12.13, Complaint and Disciplinary Procedures, effective 07-01-96.

16 NMAC 12.13, Complaint and Disciplinary Procedures (filed 06-14-96) renumbered, reformatted, amended and replaced by 16.2.13 NMAC, Complaint and Disciplinary Procedures, effective 11-06-2000.