

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 13 NURSING HOME ADMINISTRATORS
PART 17 DISCIPLINARY PROCEEDINGS

16.13.17.1 ISSUING AGENCY: New Mexico Nursing Home Administrators Board
[10-31-95; 16.13.17.1 NMAC - Rn, 16 NMAC 13.17.1, 1-25-2001; A, 04-15-2002]

16.13.17.2 SCOPE: The provisions in Part 17 of Chapter 13 may be of interest to anyone who may wish to file a complaint against a nursing home administrator licensed by the Board. Disciplinary proceedings may be initiated against licensees or applicants.
[10-31-95; 16.13.17.2 NMAC - Rn, 16 NMAC 13.17.2, 1-25-2001]

16.13.17.3 STATUTORY AUTHORITY: Part 17 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6, 61-13-13, 61-13-14, and 61-13-15 (1993 Repl. Pamp.) and the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pamp.); and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).
[10-31-95; 16.13.17.3 NMAC - Rn, 16 NMAC 13.17.3, 1-25-2001; A, 02-15-2004]

16.13.17.4 DURATION: Permanent.
[10-31-95; 16.13.17.4 NMAC - Rn, 16 NMAC 13.17.4, 1-25-2001]

16.13.17.5 EFFECTIVE DATE: October 31, 1995, unless a later date is cited at the end of a section.
[2-24-88...10-31-95; 11-29-97; 16.13.17.5 NMAC - Rn, 16 NMAC 13.17.5, 1-25-2001; A, 02-15-2004]

16.13.17.6 OBJECTIVE: The objective of Part 17 of Chapter 13 is to set forth the procedures for filing complaints against licensees and the procedures for the Board to follow in processing complaints.
[10-31-95; 16.13.17.6 NMAC - Rn, 16 NMAC 13.17.6, 1-25-2001]

16.13.17.7 DEFINITIONS:

- A. “Complaint”** means a complaint filed with the board against an applicant for licensure or against a licensee.
 - B. “Complainant”** means the party who files a complaint against a licensee or against an applicant for licensure.
 - C. “Respondent”** means the licensure applicant or the licensee who is the subject of the complaint filed with the board.
 - D. “Hearing”** means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in disciplinary action against the respondent’s application for licensure or his or her license to practice nursing home administration.
 - E. “Violation”** means a violation of the New Mexico Nursing Home Administrators Act or the rules and regulations duly adopted by the board.
 - F. “Notice of contemplated action or NCA”** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board’s intent to take action based upon the violations of practice charged in the subject complaint, and whereby the respondent is afforded the opportunity for a hearing before the board.
 - G. “License revocation”** means to prohibit the conduct authorized by the license.
 - H. “License suspension”** means to prohibit, for a stated period of time, the conduct authorized by the license.
 - I. “License restricted subject to conditions”** means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.
 - J. “Pre-NCA agreement”** means an agreement reached between the board and the respondent as an option to the formal NCA and hearing administrative hearing process.
 - K. “Mediation agreement”** means an agreement reached through mediation between the board and the respondent as an option to the formal NCA and formal administrative hearing process.
- [11-29-97; 16.13.17.7 NMAC - Rn, 16 NMAC 13.17.7, 1-25-2001; A, 02-15-2004]

16.13.17.8 COMPLAINTS: The disciplinary process against a board-licensure may be instituted by sworn complaint on a board-approved form by any person, including board members and board staff. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act.
[10-31-95; 11-29-97; 16.13.17.8 NMAC - Rn, 16 NMAC 13.17.8, 1-25-2001; A, 02-15-2004]

16.13.17.9 INVESTIGATION: Upon receipt of the sworn complaint against a board-licensure, the board will cause an investigation to be made into the subject complaint by the board's standards of practice committee.
[10-31-95; 11-29-97; 16.13.17.9 NMAC - Rn, 16 NMAC 13.17.9, 1-25-2001; A, 02-15-2004]

16.13.17.10 STANDARDS OF PRACTICE COMMITTEE: The standards of practice committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board as a standards of practice committee.

A. The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.

B. The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

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

D. The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

E. The standards of practice committee will have independent authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined budgetary availability for such services.

F. Upon completion of its investigation, the standards of practice committee, with the assistance of board counsel may draw up pre-NCA settlement or mediation agreement proposal with the respondent as a means of resolving the complaint. The proposed agreement or any other recommendations by the standards of practice committee concerning proper disposition of the subject complaint shall be reported and presented by the committee to the board for further action.

G. Upon review and consideration, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

H. Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or licensees who are the subject of the complaint.

I. If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

J. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

K. 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 and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[10-31-95; A, 11-29-97; 16.13.17.10 NMAC - Rn, 16 NMAC 13.17.10, 1-25-2001; A, 02-15-2004]

16.13.17.11 PRIVATE CAUSE OF ACTION: Neither the action nor inaction by the Board on any complaint shall preclude the initiation of any private cause of action by the complainant.
[10-31-95; 16.13.17.11 NMAC - Rn, 16 NMAC 13.17.11, 1-25-2001]

16.13.17.12 DISCIPLINARY ACTION: In accordance with the Uniform Licensing Act, the Board has authority to impose penalties in disciplinary matters. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

A. Formal Letters of Reprimand: The Board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be

subject to the provisions of the Uniform Licensing Act and shall be a matter of public record.

B. [RESERVED]

C. [RESERVED]

D. RESERVED]

E. Prehearing Motions: The Board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing.

F. Settlement Agreements: The Board may enter into a settlement agreement or mediation agreement with the Respondent as a means of resolving a complaint.

G. [RESERVED]

H. Costs of Disciplinary Proceedings: Licensees or license applicants shall bear all costs of disciplinary proceedings unless they are excused by the Board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 of the Uniform Licensing Act is not taken by the Board.

I. Uniform Licensing Provision. In accordance with Section 61-1-7.G of the Uniform Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the Board shall be subject to disciplinary action.

J. License Returned to the Board: Any wall license, renewal license, or temporary permit issued by the Board must be returned to the Board subsequent to revocation or suspension. The item(s) listed must be returned in person or by certified mail no later than thirty (30) days after the suspension or revocation order by the Board.

K. Federal Fraud and Abuse Data Bank: With regard to the Federal Health Care Integrity and Protection Databank (or its successor databank), which was established by the enactment of the Federal Health Insurance Portability and Accountability Act of 1996:

(1) The Board may report to the databank disciplinary actions taken by the Board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The Board must report to the databank disciplinary actions taken by the Board that do contain an admission or finding of guilt or liability against applicants or licensees.

L. National Data Bank For Long Term Care Administrators: With regard to the national databank for long term care administrators established by the National Association of Boards of Examiners for Long Term Care Administrators (or its successor):

(1) The Board may report to the databank disciplinary actions taken by the Board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The Board must report to the databank disciplinary actions taken by the Board that do contain an admission or finding of guilt or liability against applicants or licensees.

[10-31-95; 11-29-97; 16.13.17.12 NMAC - Rn, 16 NMAC 13.17.12, 1-25-2001; A, 04-15-2002]

16.13.17.13 COMPLAINTS RELATED TO UNLICENSED PRACTICE: In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam), a person who is not licensed to engage in the practice of nursing home administration by the board is subject to disciplinary action and proceedings by the board if it is determined that he or she has been practicing nursing home administration in New Mexico without a valid New Mexico license.

A The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of nursing home administration.

B. In addition, the board may assess the person engaging in the unlicensed practice of nursing home administration and/or the company, firm, or entity that employed the unlicensed person to act in the capacity of nursing home administrator, the administrative costs, including investigative costs and the costs of conducting a hearing.

C. Reports of unlicensed practice of nursing home administration may be reported for investigation to the board by phone, fax, mail, or e-mail.

[16.13.17.13 NMAC - N, 02-15-2004]

HISTORY of 16.13.17 NMAC:

Pre-NMAC History:

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

NHA Manual #88-1, Administrative Rules and Regulations of the New Mexico Board of Nursing Home Administrators, filed 01-25-88.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 13.17, Disciplinary Proceedings, filed 10-13-95 replaced that relevant portion of NHA Manual #88-1, filed 01-25-88.

16 NMAC 13.17, Disciplinary Proceedings, filed 10-13-95, renumbered and reformatted **to** 16.13.17 NMAC, Disciplinary Proceedings, effective 1-25-2001.