

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 15 OCCUPATIONAL THERAPISTS
PART 5 DISCIPLINARY PROCEEDINGS

16.15.5.1 ISSUING AGENCY: Board of Examiners for Occupational Therapy
[06-14-97; 16.15.5.1 NMAC - Rn & A, 16 NMAC 15.5.1, 06-29-00]

16.15.5.2 SCOPE: All those individuals who wish to practice occupational therapy in the State of New Mexico.
[06-14-97; 16.15.5.2 NMAC - Rn, 16 NMAC 15.5.2, 06-29-00]

16.15.5.3 STATUTORY AUTHORITY: Section 61-12A-21 and 61-12A-22, NMSA 1978.
[06-14-97; 16.15.5.3 NMAC - Rn, 16 NMAC 15.5.3, 06-29-00]

16.15.5.4 DURATION: Permanent.
[06-14-97; 16.15.5.4 NMAC - Rn, 16 NMAC 15.5.4, 06-29-00]

16.15.5.5 EFFECTIVE DATE: June 14, 1997, unless a later date is cited at the end of a section.
[06-14-97; 16.15.5.5 NMAC - Rn & A, 16 NMAC 15.5.5, 06-29-00]

16.15.5.6 OBJECTIVE: To establish the procedures for filing complaints against licensees and to further define actions by a licensee which are considered incompetent or unprofessional practice.
[06-14-97; 16.15.5.6 NMAC - Rn, 16 NMAC 15.5.6, 06-29-00]

16.15.5.7 DEFINITIONS:

- A. "Applicant" means the person who has applied for a license.
 - B. "Board" means the Board of Examiners for Occupational Therapy.
 - C. "Complaint Chairperson" means the professional board member who has been designated to review complaints.
 - D. "Complaint Manager" means the board administrator or any member of the Board who may be appointed by the Board Chairperson.
 - E. "License" means certificate, permit, or other authorization to engage in the profession of occupational therapy.
 - F. "Revoke a license" means to prohibit the conduct authorized by the license.
 - G. "Suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow, for a stated period of time, the conduct authorized by the license subject to conditions which are reasonably related to the grounds for suspension, including any conditions of probation.
- [06-14-97; 16.15.5.7 NMAC - Rn, 16 NMAC 15.5.7, 06-29-00]

16.15.5.8 CONDUCT OF HEARING REGULATIONS

- A. ***Opportunity for a Licensee or Applicant to have a Hearing:*** Pursuant to the Uniform Licensing Act, 61-1-1 to 61-1-33 NMSA 1978, every licensee or applicant shall be afforded notice and an opportunity to be heard before the Board shall have authority to take any action, the effect of which would be:
 - (1) to deny a license after examination for any cause other than failure to pass an examination or failure to meet educational or administrative requirements for the issuance of a license;
 - (2) to deny a license for which application has been duly made on the basis of reciprocity;
 - (3) to withhold the renewal of a license for any cause other than failure to pay the required renewal fee;
 - (4) to suspend a license; and
 - (5) to revoke a license.
- B. ***Limitations:*** Any action which would have the effect of denying, revoking, or suspending a license shall be governed by the Uniform Licensing Act, 61-1-1, et seq. NMSA 1978.
- C. ***Complaint Procedures:***

(1) ***Inquiries Regarding Making a Complaint:*** A complaint may be initiated by any person through a telephone call, a written complaint, or a walk-in complaint presented to the Board office. Only those complaints that are in writing on the official Occupational Therapy Complaint Form will be formally addressed by the Board. The forms required for an official complaint can be obtained from the Board office, Board of Examiners for Occupational Therapy, P.O. Box 25101, Santa Fe, NM, 87504.

(2) ***Procedures for Receipt of a Complaint at the Board's Office:*** The Board Administrator, or any member of the Board who may be appointed by the Board Chairperson, will act as the Complaint Manager for the procedures outlined below. Upon receipt of a written, signed complaint, or upon the Board's own action as initiated by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, if the Board has reasonable cause to believe that the Occupational Therapy Act or the rules and regulations promulgated pursuant thereto have been or are being violated, the Complaint Manager shall:

- (a) log in the date the complaint is received in the Board office;
- (b) determine that the subject of the complaint is a licensed occupational therapist (OT), a licensed occupational therapy assistant (OTA), a person practicing on a provisional permit or a person not licensed to practice;
- (c) assign a complaint number and set up an individual file. Complaint numbering shall begin in January of each year;
- (d) forward the complaint to the professional board member who has been designated to review complaints (Complaint Chairperson); and
- (e) send a certified letter to the complainant confirming receipt of the complaint.

(3) ***Review by the Complaint Committee:***

(a) The Complaint Chairperson and Complaint Manager will comprise the Complaint Committee, and will review all written, signed complaints filed against a licensee. The Complaint Committee shall provide the subject of the complaint ("respondent") with a copy of the complaint within thirty (30) calendar days of receipt of the complaint in the Board office, 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) Unless it has been determined that disclosure of the complaint will substantially and materially impair the integrity or efficacy of the investigation, so that the investigation is proceeding without notice to the respondent at the initial stage, the respondent shall be provided twenty (20) calendar days from the date of signature on the receipt of certified mail in which to file a written response to the complaint, and shall be advised that he/she is required to provide all documents and exhibits in support of his/her position.

(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 Subparagraph (a) of Paragraph (3) of Subsection C of 16.15.5.8 NMAC, above, a copy of the complaint shall be provided to the respondent no later than at the time of the issuance of a Notice of Contemplated Action ("NCA"), if any.

(d) If the Complaint Chairperson and the Complaint Manager determine that further information is needed, the Committee may employ an investigator and/or experts to review complaints as part of its investigation.

(e) The purpose of an investigation is to gather further data regarding the complaint and to verify facts. All complaints, unless dismissed for lack of jurisdiction, will be investigated. Investigations may include: writing letters seeking further information; making phone calls to administrators or supervisors; making phone calls to witnesses; making onsite visits at facilities providing occupational therapy services and requesting official patient records.

(f) Upon completion of the investigation, the investigator will prepare a written report which includes its factual findings and conclusions, all pertinent exhibits, and which makes recommendations to the Board as to a course of action.

(g) If the Complaint Chairperson and the Complaint Manager agree that the Board does not have jurisdiction, both the complainant and respondent will be notified in writing by certified letter. The letter will explain why the case cannot be accepted for investigation and/or action (e.g., due to the statute of limitations, or the nature of the complaint being a fee dispute, or there being no violation of the Occupational Therapy Act or the rules and regulations promulgated thereto), or it may note that the complaint can be referred to another agency. The letter will come from the Board and may be signed by the Board Chairperson or, upon delegation by the Board Chairperson, by the Complaint Manager on behalf of the Chairperson.

D. ***Review by the Board:***

(1) Unless the Complaint Committee dismisses the complaint pursuant to Subparagraph (g) of Paragraph (3) of Subsection C of 16.15.5.8 NMAC above, it shall present its report and recommendations(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.

(2) The Complaint Chairperson shall not vote on the decision regarding the disposition of the complaint and shall not participate in any adjudicatory hearing or vote on any disciplinary action against the applicant or licensee arising out of the Complaint Committee's investigation. Decisions affecting complaints require a quorum of the Board.

(3) Subject to Paragraph (2) of Subsection D of 16.15.5.8 NMAC, above, after the Complaint Committee's report has been voted upon by the Board, the case will be closed, if the Board determines that there is not sufficient evidence or cause to issue an NCA. A certified letter from the Board will be sent within thirty (30) calendar days of the date of the Board's decision to both the complainant and respondent. The letter will state the Board's action and reasons for its decision.

(4) Subject to Paragraph (2) of Subsection D of 16.15.5.8 NMAC, above, after the Complaint Committee's report has been reviewed by the Board, the Board may vote to issue an NCA if it determines there is sufficient evidence or cause to believe that the Respondent has violated the Occupational Therapy Act, or the rules and regulations promulgated pursuant to the Act.

(5) If the Board votes to issue an NCA, a complete copy of the Complaint Committee's report, including exhibits, shall be forwarded to the Attorney General's Office for assignment of a prosecuting attorney for review and the Attorney General's decision as to whether there is a sufficient basis to prosecute.

(6) Following the issuance of a notice of contemplated action, the Board may (at its option) authorize a board member or the prosecutor to confer with the applicant or licensee for the purpose of seeking settlement of the complaint. Such settlement must be approved by a quorum of the Board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of his/her rights to hearing under the Uniform Licensing Act.

E. ***Disciplinary Hearings:*** All disciplinary hearings shall be conducted in accordance with the Uniform Licensing Act.

[06-14-97; 16.15.5.8 NMAC - Rn & A, 16 NMAC 15.5.8, 06-29-00; A, 04-03-03]

16.15.5.9 SANCTIONS:

A. "Unprofessional conduct" as used in the Occupational Therapy Act and in the rules and regulations of the New Mexico Board of Examiners for Occupational Therapy shall include, but shall not be limited to, the following types of acts or omissions:

(1) any violation of the Code of Ethics, as determined by the New Mexico Board of Examiners for Occupational Therapy;

(2) making false statements or providing false information in connection with an application for licensure or for licensure renewal;

(3) engaging in false, misleading, or deceptive advertising;

(4) violation of any provision of the New Mexico Occupational Therapy Act, as may be amended from time-to-time, or violating any rules or regulations of the Board promulgated pursuant thereto;

(5) harassment, or undue to improper intimidation of a patient/client, employee, colleague or other person in the role or context of the licensee's or applicant's status as an occupational therapist or occupational therapy assistant, including, but not limited to, assault or battery on any such person;

(6) sexual harassment or abuse of a patient/client, employee, colleague, or other person in the role or context of the licensee's or applicant's status as an occupational therapist or occupational therapy assistant;

(7) any failure to possess and apply the knowledge, or to use the skill and care ordinarily used by reasonable well-qualified occupational therapists or occupational therapy assistants under similar circumstances, giving due consideration to the locality involved;

(8) obtaining, or attempting to obtain, any compensation or other consideration by fraud or deceit;

(9) misrepresentation or falsification of credentials, including, but not limited to, education, training, experience or competence;

(10) violation of any Federal, State or local law or ordinance which relates to the practice for which the individual has been licensed or for which the person is an applicant for licensure;

(11) conviction of a crime, the circumstances of which substantially relate to the practice of occupational therapy, or which indicate an inability to safely and proficiently engage in the practice of occupational therapy;

(12) impairment of the licensee's or applicant's ability to practice occupational therapy as a result of alcohol or use of other drugs; and

(13) imposition of discipline upon the licensee or applicant for licensure by any other jurisdiction in which the licensee or applicant is licensed;

B. Pursuant to the Occupational Therapy Act, the Board, in its sole and sound discretion, may impose any of the following sanctions against a licensee or applicant for licensure upon a finding of a violation of the New Mexico Occupational Therapy Act or the rules and regulations, or Code of Ethics, adopted by the Board pursuant to the Act, including for those acts of "unprofessional conduct" defined in Section 9 of this rule:

(1) denial of application for licensure;

(2) refusal to renew licensure;

(3) written reprimand;

(4) written censure;

(5) imposition of probationary conditions on a license for a specified time period;

(6) restrictions or limitations on the scope of a practice;

(7) the requirement that the licensee or applicant complete a program of remedial education or treatment;

(8) monitoring of the practice by a supervisor approved by the Board;

(9) corrective action as specified by the Board;

(10) suspension of a license;

(11) revocation of a license;

(12) in addition to or in lieu of any of the foregoing, payment of a fine for each violation found, not to exceed \$1000.00, unless a greater amount is provided by law; and

(13) in addition to, or in lieu of any of the foregoing, a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

C. Any licensee whose license has been revoked may reapply for licensure one year from the effective date of the revocation.

(1) The Board shall have discretion to approve or to reject any application for reinstatement of the license following the one (1) year period of revocation.

(2) If the Board determines that rejection of the application for reinstatement of the license will be considered, it shall do so only in accordance with the notice and hearing provisions of the Uniform Licensing Act.

(3) No application for reinstatement shall be granted unless all fines and costs assessments related to the license revocation proceeding shall have been paid in full.

[06-14-97; 16.15.5.9 NMAC - Rn, 16 NMAC 15.5.9, 06-29-00; A, 04-03-03]

HISTORY of 16.15.3 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with State Records and Archives:

BOTP 84-2, Conduct of Hearing Regulations, filed 12-10-84

BOTP 90-2, Disciplinary Proceedings, Conduct of Hearing Regulations, filed 4-27-90

Rule 95-2 Disciplinary Proceedings, Conduct of Hearing Regulations, filed 2-14-95

Rule 95-2 Disciplinary Proceedings, Conduct of Hearing Regulations, filed 2-17-95.

History of the Repealed Material: [RESERVED]