

This is an amendment to 16.22.11 NMAC, Section 8, and Section 9 effective 02/10/2022.

**16.22.11.8 COMPLAINT PROCEDURES:**

**A. Inquiries regarding filing of complaints.**

(1) Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator or compliance liaison for a response.

(2) Upon receipt of an inquiry, the board administrator or compliance liaison shall forward to the potential complainant a complaint form with instructions on how to file the complaint. Complaints shall be submitted in writing on the prescribed form, signed [~~and notarized~~], and state the facts upon which the complaint is based. Anonymous complaints will not be investigated, unless the board determines an exception is valid due to unusual circumstances.

(3) Once a complaint, is made, it will come under the provisions of this section and cannot be withdrawn.

**B. Procedures for processing complaints.** The board administrator or compliance liaison shall:

(1) log in the date the complaint is received;

(2) determine if the subject of the complaint is a licensed psychologist, psychologist associate or an applicant or person otherwise within the jurisdiction of the board;

(3) assign an individual file with a complaint number, which numbering sequence shall begin each new calendar year;

(4) send a letter to the complainant confirming receipt of the complaint;

(5) forward the complaint to respondent with a letter requesting a response to the allegations and any documents or materials relevant to the complaint, unless it will impede an investigation or interfere with the acquisition of documents or relevant papers or the development of the case; and

(6) forward the complaint file to the chair of the complaint committee.

**C. Review by the complaint committee.**

(1) The chair of the complaint committee is appointed by the board chair and shall consist of a board member and may include the board administrator and compliance liaison.

(2) The complaint committee shall review the entire complaint file to determine if the allegations in the complaint are substantiated and constitute grounds for disciplinary action.

(3) The complaint committee or its designee may employ experts, consultants, or private investigators to assist in investigations of complaints.

(4) The complaint committee, or its designee, on behalf of the board, may issue investigative subpoenas, pursuant to Subsection A of Section 61-1-4 NMSA 1978.

(5) Upon completion of an investigation and review, the complaint committee shall submit to the full board a case summary containing alleged violations of the code, board regulations or the act and recommendations for disposition. Throughout this process, confidentiality of interested parties will be maintained.

**D. Review by the full board.**

(1) Any board member or any member of the complaint committee who is partial or who believes he is not capable of judging a particular controversy fairly on the basis of [~~it~~] it's own circumstances shall not participate in the decision whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

(2) The board shall review the case summary presented by the complaint committee, relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a ~~an~~ notice of contemplated action.

(3) Following the issuance of a notice of contemplated action, the board may at its option authorize a board member, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by 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 rights to hearing under the Uniform Licensing Act.

(4) The board may refer a complaint to the attorney general for injunctive proceedings or to the district attorney for criminal prosecution.

[16.22.11.8 NMAC - Rp, 16.22.11.8 NMAC, 11/15/2006; A, 2/22/2013; A, 02/10/2022]

**16.22.11.9 ADJUDICATORY PROCEEDINGS:**

**A. General provisions and pre-hearing and preliminary matters.**

- (1) All hearings shall be conducted either by the board or, at the election of the board, by a hearing officer.
- (2) If the board appoints a hearing officer, the hearing officer shall have authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case. Except as otherwise limited in this part, the hearing officer shall have the authority to rule on all non-dispositive motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case, including, without limitation.
- (a) Unopposed or stipulated motions to change venue.
- (b) Motions for continuance of a hearing date. A motion to vacate the hearing must contain an affirmative statement that the licensee or applicant waives his right to a hearing held not more than 60 days from the date of service of the notice hearing.
- (c) The granting of one notice of pre-emptory excusal to each party if the notice is timely and if the pre-emptory excusal does not result in a loss of a quorum of the board.
- (d) Motions regarding discovery.
- (3) The original of any papers and pleadings shall be filed with the board. Copies shall be sent to the hearing officer and attorneys or parties of record.
- (4) The hearing officer or designated board member shall issue appropriate orders to control the course of the proceedings.
- (5) Consistent with provisions of the Uniform Licensing Act and to the extent practicable, the rules of civil procedure for the district courts shall apply unless the hearing officer or designated board member orders otherwise.
- (6) A request for an order shall be made by a motion filed with the board. Except for motions made during the course of the hearing, a motion shall be in writing. A motion shall state with particularity the grounds for the motion and shall set forth the relief and order sought.
- (7) A motion shall be accompanied by a memorandum brief in support of the motion. The brief shall state with particularity the grounds for the motion and shall contain citation to authorities, statutes, and references to the pleadings on file. If matters outside of the pleadings are considered, a copy of the referenced material shall be attached to the brief. Responsive briefs shall be permitted in accordance with the rules of civil procedure for the district courts to the extent practicable unless the hearing officer or designated board member orders otherwise.
- (8) The hearing officer or the designated board member may order the filing of briefs or other documents and may set oral argument on any matter.
- (9) No more than two continuances of the hearing date will be granted without the approval of the board for good cause shown.
- (10) All dispositive motions shall be decided by the board.
- (11) No proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the board and executed by the board and the licensee or applicant. The board or hearing officer may seek information from the administrative prosecutor and the licensee or applicant concerning circumstances of the case relevant to a consideration of the proposed settlement or clarification of the proposed terms and conditions. No board member is presumed to be biased and shall not be excused based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case. The board may submit a counterproposal for the settlement or resolution of the case.
- (12) Any proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall contain at least the following:
- (a) an admission of all jurisdictional facts; an acknowledgment of the rights contained in the Uniform Licensing Act and an express waiver of those rights and of all rights to hearing and judicial review or any other opportunity to contest the validity of the board order in any other proceeding or forum;

(b) a statement that the proposal resolves only the violations alleged in the notice of contemplated action and a statement that the board reserves the right to initiate other proceedings for any other violations of the act or board regulations;

(c) a general nature of the evidence underlying each alleged violation;

(d) if appropriate, a list of provisions of the acts or practices from which the licensee or applicant will refrain in the future;

(e) a statement of the type, terms, and conditions of the proposed disciplinary action of the board;

(f) a statement that the licensee will be responsible for all costs of disciplinary proceedings or a statement setting forth the reason why the licensee should be excused from paying costs; the affidavit of the board administrator concerning the costs incurred to date shall accompany the proposal;

(g) a statement that the decision and order of the board shall be a public record and reported, as required by law. If the proposed settlement involves an action of the type specified in the Uniform Licensing Act ~~Section 61.1.1-3 NMSA 1978 [Subsections D (i) thru 61-1-3 K(n), NMSA 1978]~~ or voluntary surrender of a license in lieu of prosecution, the decision and order shall be reported by the board to the ASPPB disciplinary data report, healthcare integrity and protection data bank (HIPDB), and to other appropriate entities;

(h) other provisions necessary to ensure the complete and final resolution of the proceedings.

(13) A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or presiding officer upon the filing of a timely motion.

**B.** Duties of the board administrator. The board administrator shall:

(1) after consultation with the board or hearing officer, issue a notice of hearing stating the date, time, and place of the hearing;

(2) execute on behalf of the hearing officer or board notices, scheduling orders, subpoenas, and subpoenas duces tecum, and other routine procedural documents that facilitate the efficient conduct of adjudicatory proceedings;

(3) maintain the official record of all papers and pleadings filed with the board in any matter;

(4) prepare an affidavit as to costs of any disciplinary proceeding at the conclusion of any hearing or upon request by a party submitting a proposed settlement, consent agreement, or voluntary surrender of a license in lieu of prosecution;

(5) prepare, certify, and file with the district court the record of the case on appeal or review;

(6) unless the board orders otherwise, have the authority to sign the decision of the board to grant or refuse a request to reopen the case.

**C.** Conduct of hearings.

(1) The hearing officer, or presiding officer if the case is heard by the board, shall ensure the fair, efficient, and orderly conduct of the hearing in accordance with the Uniform Licensing Act.

(2) Unless the board orders otherwise, a board member hearing officer, the board chair, or presiding officer shall have the authority to sign the written decision of the board.

(3) The board administrator shall serve the decision of the board on the licensee or applicant in accordance with law.

(4) A motion for an order staying the operation of a board decision shall be decided by the board.

[16.22.11.9 NMAC - Rp, 16.22.11.9 NMAC, 11/15/2006; A, 02/10/2022]