

This is an amendment to 15.6.16 NMAC, Sections 6, 7, 8, 9, 10, 11 and 14, effective 01-15-2015.

15.6.16.6 OBJECTIVE: ~~[The objective of Part 16 of Chapter 6 is to]~~ Set forth the disciplinary authority of the commission over its licensees and disciplinary procedures and actions that the commission's licensees are subject to.

[15.6.16.6 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.7 DEFINITIONS:

A. "Complaint" means a complaint filed with the commission against a licensee or an applicant for licensure ~~[or against a licensee]~~.

B. "Complainant" means ~~[the]~~ a 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]~~ commission.

D. "Hearing" means the formal process whereby the respondent is afforded the opportunity to be heard by the commission, or its designated hearing officer, before the commission takes action which might result in disciplinary action against the respondent's license or application for license.

E. "Violation" means a violation of the Professional Athletic Competition Act or the rules and regulations ~~[duy]~~ adopted by the commission

F. "Notice of Contemplated Action" or "NCA" means the process ~~[provided]~~ whereby the respondent is notified of the Commission's intent to take action against the respondent's license, and whereby the respondent is afforded the opportunity for a hearing ~~[before the Commission]~~.

G. "Shall" means mandatory; a requirement.

H. "Should" means a suggestion or recommendation; not a requirement.

I. "License Revocation" means to ~~[prohibit the]~~ rescind a license, thus barring conduct authorized by the license.

J. "License Suspension" means to prohibit, for a limited and specified stated period of time, the conduct authorized by the license.

[15.6.16.7 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.8 AUTHORITY OF COMMISSIONER OR DEPUTY:

A. The Commission may, in its discretion, take the following action or any combination of such actions deemed appropriate:

(1) Suspend the license for a period of time deemed appropriate.

(2) Revoke the license.

(3) Order future compliance and any remedial action as ~~[deemed appropriate]~~ determined by the Commission.

(4) Refer alleged violations of Sections 60-2A-27 through 32 NMSA 1978 to the office of the district attorney in the judicial district in which the alleged violation(s) occurred.

B. Each commissioner, ~~[or a representative or deputy designated by the Commission]~~ shall have full power to act as an official on behalf of the commission at all contests and exhibitions to fully enforce all of the rules of the commission. Furthermore, each ~~[such official]~~ commissioner has the power and authority to immediately suspend a license, without prior notice, for any violation of this chapter of the laws of this state, if doing so is necessary in the interest of protection the health and safety of the unarmed combatant or any member of the public.

[15.6.16.8 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.9 VIOLATORS SUBJECT TO DISCIPLINARY ACTION: Any commission licensee or permit holder who violates the laws of the state of New Mexico or the rules and regulations of the commission, may have his license or permit revoked, suspended, fined or otherwise disciplined, in such a manner as the commission may direct.

[15.6.16.9 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.10 LICENSE OR PERMIT SUSPENSION: In addition to the power of any commissioner to immediately suspend a license under 15.6.16.8 NMAC, the commission may suspend any license or permit it has issued by issuing a dated notice to that effect, served by certified mail, return receipt requested to the licensee or permit holder.

A. Such suspension shall be without any advance hearing and shall take effect upon issuance of such notice of suspension by the commission, if such suspension is necessary in the interest of protecting the health and safety of the public.

B. The notice shall specify the effective date and term of the suspension.

C. The suspended licensee or permit holder ~~[may apply to the Commission for a hearing on the matter to]~~ shall be provided a hearing on the matter within twenty (20) days of the date the notice of suspension is served. Such hearing shall be held to determine whether the suspended license or permit shall be revoked as specified in this section.

D. ~~[The application for hearing must be in writing and must be received by the Commission within twenty (20) days of the licensee's or permit holder's receipt of the Commission's notice of suspension, as recorded on the return receipt for the certified notice.]~~ The notice of suspension must be in writing and must be served on the respondent(s) within three (3) days from the date the license or permit was suspended by the commission or from the date the license or permit was suspended by a commissioner.

[15.6.16.10 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.11 LICENSE OR PERMIT REVOCATION: Before the commission may revoke a license or permit, the subject licensee or permit holder shall be served, by certified mail, return receipt requested, a notice of contemplated action ("NCA") to revoke the license.

A. In the ~~[notice]~~ NCA, the ~~[licensee or permit holder]~~ respondent will be advised ~~[to]~~ of their right to request a hearing on the revocation, in which they can appear before the commission or hearing officer appointed by the commission. ~~[at a hearing scheduled within twenty (20) days]~~ Such request for a hearing must be made by the respondent within twenty (20) days from the date the NCA was served on the respondent. Respondents must be notified in the NCA of their right to be represented by counsel, to present relevant evidence, and to examine all opposing witnesses who may testify at their hearing.

B. The ~~[notice of such hearing]~~ NCA shall state the alleged misconduct upon which the contemplated license or permit revocation is based.

C. The ~~[licensee or permit holder]~~ respondent may appear in person or be represented by his attorney to answer to the charges specified in the ~~[notice of contemplated action]~~ NCA and to show cause as why his license or permit should not be revoked.

D. At any stage of the hearing proceedings, the commission may require the ~~[licensee or permit holder]~~ respondent to take the stand and give sworn testimony.

E. All witnesses, ~~[licensees, or permit holders]~~ and respondents must testify under oath at any disciplinary hearing convened and conducted by the commission. The oath may be administered by any commissioner present or by the court reporter, if one is available to record the proceedings.

F. The commission or designated hearing officer shall be the sole judge of the relevancy and competency of the testimony given, the credibility of the witnesses, and the sufficiency of the evidence presented.

G. In the event that the ~~[licensee or permit holder]~~ respondent does not appear at the scheduled hearing; or if having appeared, the facts and evidence presented at the hearing warrant, in the discretion of the commission, a revocation of the license or permit, the license or permit shall be revoked and a notice of revocation shall be promptly served on the licensee by certified mail, return receipt requested.

[15.6.16.11 NMAC - N, 03-23-2002; A, 01-15-2015]

15.6.16.14 [RESERVED] SETTLEMENTS:

A. Settlements are encouraged. Settlements upon terms that are consistent with the provisions of this act are encouraged at any stage of disciplinary proceedings. Settlements are negotiated by the administrative prosecutor on behalf of the commission.

B. Content of settlement agreements. Every proposed settlement agreement shall:

(1) state how each violation of the Professional Athletic Competition Act and the rules and regulations of this commission are affected by the settlement;

(2) if the settlement is contingent upon certain action by the respondent, describe the contingency and the consequences of the respondents failure to meet the contingency;

(3) if the settlement is not intended as a full and complete settlement of all issues in the case, list those issues not settled; and

(4) bear the signature and date of signature of the commission's administrative prosecutor and the respondent(s).

C. Presentation to the commission. All settlement agreements must be presented to the commission

whereupon the commission must either accept or reject the settlement. Without commission approval, the settlement will have no legal effect.

(1) Upon approval by the commission, the chairman shall sign and date the settlement agreement.

(2) The commission administrator shall file the authorized settlement agreement with the commission.

[15.6.16.14 NMAC - N, 03-23-2002; A, 01-15-2015]