

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 28 SIGNED LANGUAGE INTERPRETERS
PART 4 COMPLAINT PROCEDURES; ADJUDICATORY PROCEEDINGS

16.28.4.1 ISSUING AGENCY: Regulation and Licensing Department, Signed Language Interpreting Practices Board.
[16.28.4.1 NMAC - N, 7/21/2009]

16.28.4.2 SCOPE: The provisions of Part 4 shall apply to all licensees and applicants for license entitled to notice and hearing under the Uniform Licensing Act, (“ULA”), NMSA 1978 Sections 61-1-1 through 61-1-33 36 NMSA 1978 and to any interested person who may file a complaint against a licensee or applicant.
[16.28.4.2 NMAC - N, 7/21/2009]

16.28.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, NMSA 1978, Sections 61-34-1 through 61-34-17.
[16.28.4.3 NMAC - N, 7/21/2009; A, 1/15/2014]

16.28.4.4 DURATION: Permanent.
[16.28.4.4 NMAC - N, 7/21/2009]

16.28.4.5 EFFECTIVE DATE: December 31, 2021 ~~July 21, 2009~~ unless a later date is cited at the end of this section.
[16.28.4.5 NMAC - N, 7/21/2009]

16.28.4.6 OBJECTIVE: The objective of Part 4 is to establish procedures for filing, processing, and investigating complaints against licensees and applicants and establishes procedures for the conduct of disciplinary proceedings.
[16.28.4.6 NMAC - N, 7/21/2009]

16.28.4.7 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 an applicant for licensure.
- C. “Respondent”** means the applicant for licensure 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 the disciplinary action against the respondent’s application for licensure or their license to practice signed language interpreting.
- E. “Violation”** means a violation of the Signed Language Interpreting Practices 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 alleged violations of practice 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.

[16.28.4.7 NMAC - N, 08/18/11; A, 3/27/2021]

16.28.4.8 COMPLAINTS: The disciplinary process may be instituted by a complaint on a board approved form by any person, including board members and board staff.
[16.28.4.8 NMAC - N, 7/21/2009; 16.28.4.8 NMAC - N, 8/18/2011]

16.28.4.9 COMPLAINT PROCEDURES: Inquiries regarding filing of complaints.

A. Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

B. Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints should be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based, however, oral complaints may be received and investigated. An oral complaint submitted to the board administrator shall be in an audio, visual or audiovisual format. After the complaint committee reviews the complaint facts and determines there is cause for further investigation, the board will have the complaint translated into written English and entered onto the form provided by the board, then present the transcription to the complainant for clarification and approval. Once approved, the complainant shall resubmit the signed, notarized complaint to the board administrator. Anonymous complaints will not be investigated, unless the board determines an exception is valid due to unusual circumstances.

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

[16.28.4.9 NMAC - N, 7/21/2009; 16.28.4.9 NMAC - Rn & A, 16.28.4.8 NMAC, 8/18/2011]

16.28.4.10 INVESTIGATION: Upon receipt of the complaint, the board will cause an investigation to be made into the subject complaint by the board's boards standards of practice committee.

[16.28.4.10 NMAC - N, 7/21/2009; Repealed, 8/18/2011; 16.28.4.10 NMAC - N, 8/18/2011]

16.28.4.11 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 to the 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 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 shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.

G. Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee 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 applicant who is 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 the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and the district attorney for prosecution of persons alleged to be practicing without a valid license.

[16.28.4.11 NMAC - N, 07/21/09; Repealed, 08/18/11; 16.28.4.11 NMAC - N, 08/18/11; A, 3/27/2021]

16.28.4.12 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.
[16.28.4.12 NMAC - N, 8/18/2011]

16.28.4.13 DISCIPLINARY ACTION: In accordance with the ULA Uniform Licensing Act, the board has authority to impose penalties in disciplinary matters. The ULA 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 letter 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 ULA Uniform Licensing Act and shall be matters of public record.

B. Prehearing motions: The board may appoint a hearing officer to decide non- dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

C. Settlement agreements: Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

D. Costs of disciplinary proceedings: Licensees or 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 held pursuant to and an action in Section 61-1-3 ~~NMSA 1978~~ of the ULA Uniform Licensing Act is not taken by the board.

E. Uniform licensing provisions: In accordance with Section 61-1-7(G)~~-G NMSA 1978~~ of the ULA Uniform Licensing 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.

F. License returned to the board: Any license 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 to the board.

[16.28.4.13 NMAC - N, 8/18/2011]

G. DISQUALIFYING CRIMINAL CONVICTIONS: Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving a retaining a license or certificate by the board.

- (1) Physical Harm to Others:
 - (a) NMSA 1978, Section 30-2-1 "Murder"
 - (b) NMSA 1978, Section 30-2-3 "Manslaughter"
 - (c) NMSA 1978, Section 30-3-1 "Assault"
 - (d) NMSA 1978, Section 30-3-4 "Battery"
 - (e) NMSA 1978, Section 30-6-1 "Abandonment or abuse if a child"
 - (f) NMSA 1978, Section 30-4-1 "Kidnapping"
 - (g) NMSA 1978, Section 30-4-3 "False imprisonment"
 - (h) NMSA 1978 Section 30-9-19 "Sexual assault"
- (2) Property Damage:
 - (a) NMSA 1978, Section 30-15-1 "Criminal damage to property"
 - (b) NMSA 1978, Section 30-17-5 "Arson and negligent arson"
- (3) Fraud:
 - (a) NMSA 1978, Section 30-16-6 "Fraud"
 - (b) NMSA 1978, Section 7-1-73 "Tax fraud"
 - (c) NMSA 1978, Section 30-28-2 "Conspiracy"
 - (d) NMSA 1978, Section 30-51-4 "Money laundering"
- (4) Theft:
 - (a) NMSA 1978, Section 30-16-1 "Larceny"
 - (b) NMSA 1978, Section 30-16-2 "Robbery"
 - (c) NMSA 1978, Section 30-16-3 "Burglary"
 - (d) NMSA 1978, Section 30-16-24.1 "Theft of identity"
 - (e) NMSA 1978, Section 30-16-26 "Theft of a credit card"
 - (f) NMSA 1978, Section 30-16-11 "Receiving stolen property"
- (5) Financial Crimes:
 - (a) NMSA 1978, Section 30-16-8 "Embezzlement"

- (b) NMSA 1978, Section 30-16-9 “Extortion”
- (c) NMSA 1978, Section 30-16-10 “Forgery”
- (d) NMSA 1978, Section 30-41-1 “Soliciting and receiving illegal kickbacks”
- (6) Drug Offenses:
 - (a) NMSA 1978, Section 30-31-20 “Trafficking of controlled substances”
 - (b) NMSA 1978, Section 30-31-23 “Possession of controlled substances”
 - (c) NMSA 1978, Section 30-31-21 “Distribution to a minor”
 - (d) NMSA 1978, Section 30-6-3 “Contributing to the delinquency of a minor”
- (7) Sex Crimes:
 - (a) NMSA 1978, Section 30-37A-1 “Unauthorized distribution of sensitive images”
 - (b) NMSA 1978, Section 30-52-1 “Human trafficking”
 - (c) NMSA 1978, Section 30-9-11 “Criminal sexual penetration”
 - (d) NMSA 1978, Section 30-9-12 “Criminal sexual contact”
 - (e) NMSA 1978, Section 30-9-13 “Criminal sexual contact of a minor”
 - (f) NMSA 1978, Section 30-6A-3 “Sexual exploitation of children”
 - (g) NMSA 1978, Section 29-11A-4(P) “Failure to register as required by sex offender registration and notification act”
- (8) Miscellaneous:
 - (a) NMSA 1978, Section 30-7-16(B) “Felon in possession of a firearm”
 - (b) NMSA 1978, Section 30-24-1 “Bribery of an official”
 - (c) NMSA 1978, Section 30-24-3.1 “Acceptance of a bribe by a witness”
 - (d) NMSA 1978, Section 30-3A-3 “Stalking”
 - (e) NMSA 1978, Section 30-20-12 “Use of telephone to terrify, intimidate, threaten, harass, annoy, or offend another”
 - (f) NMSA 1978, Section 30-22-9 “Escape from a penitentiary”
 - (g) NMSA 1978, Section 66-8-102 “Driving under the influence of intoxicating liquor or drugs”
 - (h) NMSA 1978, Section 30-31-1 to -41 Violations of the controlled substances act
- (9) The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.
- (10) The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.
- (11) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual’s conduct to the extent that such conduct violated the Signed Language Interpreting Practices Act, NMSA 1978, Sections 61-34-1 to -17 and/or the ULA, NMSA 1978, Section 61-1-1 to-36, regardless of whether the individual was convicted of a crime for such conduct whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.
- (12) In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:
 - (a) an arrest not followed by a valid conviction;
 - (b) a conviction that has been sealed, dismissed, expunged or pardoned;
 - (c) a juvenile adjudication; or
 - (d) a conviction for any crime other than the disqualifying criminal convictions listed in 16.28.4.13 NMAC.

[16.28.4.13 NMAC -N, 8/18/2011]

16.28.4.14 DELEGATION OF AUTHORITY: The authority of the New Mexico signed language interpreting practices board to refer any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, for administrative prosecution is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.28.4.14 NMAC - N, 8/18/2011]

HISTORY OF 16.28.4 NMAC: [RESERVED]