

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 26 HEARING, SPEECH AND AUDIOLOGY PRACTITIONERS**  
**PART 7 GROUNDS FOR DISCIPLINARY ACTION**

**16.26.7.1 ISSUING AGENCY:** New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.  
[11/7/1998; 16.26.7.1 NMAC - Rn & A, 16 NMAC 26.7.1, 2/3/2006]

**16.26.7.2 SCOPE:** The provisions of Part 7 apply to applicants or licensees under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.  
[11/7/1998; 16.26.7.2 NMAC - Rn, 16 NMAC 26.7.2, 2/3/2006]

**16.26.7.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.  
[11/7/1998; 16.26.7.3 NMAC - Rn, 16 NMAC 26.7.3, 2/3/2006]

**16.26.7.4 DURATION:** Permanent.  
[11/7/1998; 16.26.7.4 NMAC - Rn, 16 NMAC 26.7.4, 2/3/2006]

**16.26.7.5 EFFECTIVE DATE:** November 7, 1998, unless a later date is cited at the end of a section.  
[11/7/1998; 16.26.7.5 NMAC - Rn & A, 16 NMAC 26.7.5, 2/3/2006]

**16.26.7.6 OBJECTIVE:** The objective of Part 7 is to set forth the grounds for disciplinary action which may subject an applicant or licensee to disciplinary action by the board.  
[11/7/1998; 16.26.7.6 NMAC - Rn, 16 NMAC 26.7.6, 2/3/2006]

**16.26.7.7 DEFINITIONS:** "disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.  
[16.26.7.7 – N, 2/10/2022]

**16.26.7.8 DISCIPLINARY GROUNDS AND DENIAL OF LICENSURE:** In accordance with the provisions of the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or licensee has violated the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the board's rules. The following may subject the applicant or licensee to disciplinary action by the board.

**A.** Engaging in unprofessional conduct: Unprofessional conduct includes, but is not limited to, the following:

(1) violations of the principles of ethics or the ethical proscriptions as set forth in board regulations concerning its Code of Ethics (16.26.9 NMAC);

(2) for an audiologist or dispensing otorhinolaryngologist to accept a case referred from a hearing aid dispenser and not return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.

**B.** Engaging in acts that constitute incompetence: Incompetence includes, but is not limited to, the following:

(1) failure to possess the knowledge, apply the skill or provide the care required by generally accepted standards of the professions of speech-language pathology, audiology or hearing aid dispensing; or

(2) violation of the principles of ethics II or the ethical proscriptions thereunder as set forth in board regulations relating to professional competence (Subsections D and E of 16.26.9.8 NMAC);

(3) a finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.

**C.** Aiding or abetting the practice by a person not licensed by the board. Aiding or abetting the practice of speech language pathology by a person not licensed by the board includes, but is not limited to, the following:

(1) A licensee shall not authorize or otherwise permit a speech language paraprofessional or assistant working under his or her supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.

(2) A licensee shall ensure that a speech language paraprofessional or assistant working under his or her supervision follows the plan of care.

(3) A licensee shall not authorize or otherwise permit an apprentice in speech-language pathology working under his or her supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the boards rules and shall ensure that the apprentice only engages in those duties authorized in Subsection D of 16.26.2.18 NMAC of the boards rules.

**D.** Failing to deliver to any person supplied with a hearing aid a receipt which contains the following information:

- (1) licensee's license number and signature;
- (2) the sponsor's/supervisor's signature approving of the fitting if the seller is a clinical fellow, graduate student or trainee;
- (3) address of the licensee's regular place of business;
- (4) make and model of the hearing aid;
- (5) full financial terms of the sale;
- (6) statement as to whether the hearing aid is new, used or reconditioned;
- (7) statement that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser, audiologist, clinical fellow, trainee or graduate student and not as a medical diagnosis or prescription;
- (8) terms of guarantee, if any.
- (9) hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems.

**E.** Failure of a licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board:

- (1) failure to appear before the board when requested by the board in any disciplinary proceeding;
- (2) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 et seq.;
- (3) fraudulent record keeping;
- (4) failure to comply with Continuing Education Audit. If all continuing education requirements are not met by the expiration date of the license or granted extensions date, the licensee shall be subject to disciplinary action.

**F.** Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

- (1) homicide or manslaughter;
- (2) trafficking, or trafficking in controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, use of force or threats of force against school employees or healthcare workers, arson, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, failure to register as a sex offender, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse or neglect;
- (7) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, tax fraud or evasion, forgery, embezzlement, credit card fraud, misuse of public funds or benefits, making false statements, offering or soliciting an illegal kickback or government action, tampering with public records, perjury;
- (8) escape from a custody or possession of deadly weapons in custody;
- (9) practicing healthcare without a license;
- (10) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

**G.** 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 Subsection E of this rule.

**H.** 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 Subsection A of this rule.

**I.** 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 Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act, regardless of whether the individual was convicted of a crime for such

conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**J.** 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:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in

Subsection A of this rule.

[11/7/98, 11/27/99, 12/5/99; 16.26.7.8 NMAC - Rn & A, 16 NMAC 26.7.8, 2/3/06; A, 11/28/2017; A, 2/10/2022]

**HISTORY OF 16.26.7 NMAC: [RESERVED]**