

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 11 VIOLATIONS

16.34.11.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.11.1 NMAC - Rp 16 NMAC 34.11.1, 6/16/2001]

16.34.11.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.11.2 NMAC - Rp 16 NMAC 34.11.2, 6/16/2001; A, 7/14/2018]

16.34.11.3 STATUTORY AUTHORITY: Sections 61-17A-7 and 61-17A-21 of the Barbers and Cosmetologists Act. This authorizes the board to refuse to issue, renew, suspend or revoke a license for anyone in non-compliance with the Barbers and Cosmetologists Act.

[16.34.11.3 NMAC - Rp 16 NMAC 34.11.3, 6/16/2001]

16.34.11.4 DURATION: Permanent.

[16.34.11.4 NMAC - Rp 16 NMAC 34.11.4, 6/16/2001]

16.34.11.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.11.5 NMAC - Rp 16 NMAC 34.11.5, 6/16/2001]

16.34.11.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the board to take action against a licensee in non-compliance of the act.

[16.34.11.6 NMAC - Rp 16 NMAC 34.11.6, 6/16/2001]

16.34.11.7 DEFINITIONS: Refer to Part 1.

[16.34.11.7 NMAC - Rp 16 NMAC 34.11.7, 6/16/2001]

16.34.11.8 VIOLATIONS BY LICENSEES:

A. When the board becomes aware of information or evidence tending to indicate that a violation of the act or these rules has been or is being committed by a licensee or student, it will review the matter and take appropriate action, or it may refer the matter to an informal subcommittee for review and recommendation, or it may make such investigation as it deems appropriate.

B. If an investigation is made, upon conclusion that a violation has occurred, the board shall:

- (1) take no further action;
- (2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act;
- (3) invite the parties to an informal conference with the board or the board's designee to aid in the board's resolution of the matter;
- (4) issue a cease and desist order in accordance with the Uniform Licensing Act if the board determines that conditions within the establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize the establishment;
- (5) file a formal complaint with a court of appropriate jurisdiction; or
- (6) issue or direct the board's executive director to issue a letter of warning, a statement of what the board believes must be done to come into compliance with the act or these rules or a similar communication.

[16.34.11.8 NMAC - Rp 16 NMAC 34.11.8, 6/16/2001; A, 7/16/2004; A, 12/17/2015; A, 12/27/2022]

16.34.11.9 VIOLATION OF SANITATION AND SAFETY REQUIREMENTS:

A. If an establishment or enterprise fails the second inspection (re-inspection):

- (1) an administrative fee pursuant to 16.34.15.8 NMAC;
- (2) a cease and desist order will be served in accordance with the Uniform Licensing Act;
- (3) a re-inspection fee of up to \$200.00 will be assessed, at the time of the re-inspection.

B. If an establishment or enterprise fails the third inspection (second re-inspection):

- (1) the inspector will file a complaint;
- (2) a re-inspection fee of \$200.00 will be assessed, at the time of the re-inspection;

(3) a cease and desist will be served in accordance with the Uniform Licensing Act.
[16.34.11.9 NMAC - Rp 16 NMAC 34.11.9, 6/16/2001; Repealed, 10/4/2007; N, 7/14/2018; A, 12/27/2022]

16.34.11.10 FAILURE TO RESPOND TO ANY BOARD REQUEST

Failure of a licensee to furnish the board, its investigators, or representatives with information that has been requested within 10 business days of the request is a violation, subject to discipline, including:

- A. Failure to appear before the board when requested by the board in any disciplinary proceeding;
- B. Failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.;
- C. Fraudulent record keeping;
- D. Failure to comply with Continuing Education Audit as defined in 16.34.9.8 NMAC

[16.37.11.10 NMAC – N, A.x/xx/xxxx]

HISTORY OF 16.34.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article XI, Procedures For Handling Violations, 12/22/1981.

Rule 10, Violations 3/8/1990.

Rule 10, Violations, 3/9/1992.

Rule 10, Violations, 10/19/1993.

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6/27/1986.

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11/4/1987.

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10/4/1988.

History of Repealed Material:

16 NMAC 34.11, Violations - Repealed, 6/16/2001.