

This is an amendment to 18.19.4 NMAC, Sections 32 through 42, effective 5/24/2022.

**18.19.4.32 [HEARINGS—WHEN HEARING REQUIRED—NOTIFICATION:]**

~~A.~~ Whenever the department has reason to believe any licensee has violated any provision of the Motor Vehicle Code or the regulations promulgated thereunder, the department shall schedule a hearing to determine whether or not the licensee's license should be canceled, suspended, revoked or continued.

~~B.~~ The licensee shall be notified of the hearing. Notification shall inform the licensee of the suspected violations of particular provisions of the Motor Vehicle Code and shall briefly advise the licensee of the procedures employed in hearings and of remedies subsequent to the hearing if the license is refused, canceled, suspended or revoked. At the end of the hearing or within ten (10) days thereafter, the department shall enter a written decision and order. **[RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.32 NMAC - Rn, 18 NMAC 19.4.10.4, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.33 [HEARINGS—INFORMAL CONFERENCES:]**

~~A.~~ The secretary, in appropriate cases, may provide for an informal conference before setting a hearing. An informal conference will be scheduled at a time and place agreed to by both parties. The secretary may attend or designate a delegate to attend. Both parties may bring representatives of their own choosing to the conference, and both parties may bring any records or documents that are pertinent to the issues to be discussed. An informal conference will be vacated if the parties resolve the issue prior to the scheduled date.

~~B.~~ The purpose of the informal conference is to discuss the facts and the legal issues. The result of an informal conference will usually be one of the following:

~~(1)~~ an agreement that the license can be issued without further action;

~~(2)~~ an agreement that the license can be issued, but only after certain specific requirements are satisfied;

~~(3)~~ an agreement to schedule a hearing; or

~~(4)~~ any combination of the above agreements.

~~C.~~ The appellant or the department may be given the opportunity to provide more facts if the situation warrants. There is no statutory restriction on the number of informal conferences that may be scheduled.

~~D.~~ In the event the appellant fails to appear at the informal conference without reasonable notice to the Secretary, the protest may be scheduled for a hearing without further opportunity for an informal conference.]

**[RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.33 NMAC - Rn, 18 NMAC 19.4.10.5, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.34 [HEARINGS—DEPOSITIONS:]** The parties are expected to accomplish adequate discovery by the time a hearing is held. This discovery is to be achieved by informal consultation, stipulation, deposition,

requests for admissions and production of documents and written interrogatories. If adequate discovery is not achieved within a reasonable time prior to the time a hearing is scheduled, any party may apply to the hearing officer for an order to require depositions, production of records or answers to interrogatories. Depositions may be taken orally or upon written interrogatories and cross-interrogatories.] **[RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.34 NMAC - Rn, 18 NMAC 19.4.10.6, 9/14/200; Repealed, 5/24/2022]

**18.19.4.35 [HEARINGS—CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS:]**

~~A.~~ If a party or an officer or agent of a party fails to comply with an order of the hearing officer for the taking of a deposition or otherwise relating to discovery, the hearing officer, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

~~(1)~~ infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

~~(2)~~ rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

~~(3)~~ rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, on testimony by such party, officer or agent or on the documents or other evidence discovery of which has been denied; or

~~\_\_\_\_\_ (4) \_\_\_\_\_ rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of the parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the withheld testimony, documents or other evidence.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ Any party who previously requested the secretary to issue a subpoena may request the secretary to seek the assistance of the court in the enforcement of any subpoena issued to any person who fails to provide the information or documents requested in the subpoena.] [RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.35 NMAC - Rn, 18 NMAC 19.4.10.7, 9/14/2000, Repealed, 5/24/2022]~~

#### **18.19.4.36 [HEARINGS—MOTIONS:]**

~~\_\_\_\_\_ A. \_\_\_\_\_ After a hearing is scheduled, all written motions shall be addressed to the hearing officer with copies to the opposing parties and shall be ruled on by the hearing officer. All written motions shall state the particular order, ruling or action desired and the grounds therefor.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Within 15 days after personal service of any written motion, or within 20 days after the motion is mailed, or within such longer or shorter time as may be designated by the hearing officer, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.] [RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.36 NMAC - Rn, 18 NMAC 19.4.10.8, 9/14/2000, Repealed, 5/24/2022]~~

#### **18.19.4.37 [HEARINGS—PREHEARING CONFERENCE:]**

~~\_\_\_\_\_ A. \_\_\_\_\_ The hearing officer may, and upon motion of any party shall, direct representatives for all parties to meet with the hearing officer for a prehearing conference to consider any or all of the following:~~

~~\_\_\_\_\_ (1) \_\_\_\_\_ simplification and clarification of the issues;~~

~~\_\_\_\_\_ (2) \_\_\_\_\_ stipulations and admissions of fact and of the contents and authenticity of documents;~~

~~\_\_\_\_\_ (3) \_\_\_\_\_ expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;~~

~~\_\_\_\_\_ (4) \_\_\_\_\_ matters of which official notice will be taken; and~~

~~\_\_\_\_\_ (5) \_\_\_\_\_ such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Prehearing conferences may be recorded in the discretion of the hearing officer.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ The hearing officer may enter in the record an order which recites the results of the conference. Such order shall include the hearing officer's rulings on matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.] [RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.37 NMAC - Rn, 18 NMAC 19.4.10.9, 9/14/2000, Repealed, 5/24/2022]~~

#### **18.19.4.38 [HEARINGS—GENERAL RULES ON HEARINGS:]**

~~\_\_\_\_\_ A. \_\_\_\_\_ Hearings are held in Santa Fe. Hearings are open to the public. An appellant may appear at a hearing in person or be represented by a bona fide employee, an attorney or other bona fide representative.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Every party shall have the right of due notice, cross examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in 18.19.4.30 through 18.19.4.42 NMAC.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that witness.] [RESERVED]~~

~~[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.38 NMAC - Rn & A, 18 NMAC 19.4.10.10, 9/14/2000, Repealed, 5/24/2022]~~

#### **18.19.4.39 [HEARINGS—HEARING OFFICER:]**

~~\_\_\_\_\_ A. \_\_\_\_\_ Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the secretary.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings, and to maintain order. The hearing officer shall have all powers necessary~~

to carry out these duties, including the following:

- ~~\_\_\_\_\_ (1) to administer or have administered oaths and affirmations;~~
- ~~\_\_\_\_\_ (2) to cause depositions to be taken;~~
- ~~\_\_\_\_\_ (3) to require the production or inspection of documents and other items;~~
- ~~\_\_\_\_\_ (4) to require the answering of interrogatories and requests for admissions;~~
- ~~\_\_\_\_\_ (5) to schedule a prehearing conference for simplification of the issues, or any other proper purpose;~~
- ~~\_\_\_\_\_ (6) to require the filing of briefs on specific legal issues prior to the hearing;~~
- ~~\_\_\_\_\_ (7) to rule upon offers of proof and receive evidence;~~
- ~~\_\_\_\_\_ (8) to regulate the course of the hearings and the conduct of the parties and their representatives therein;~~
- ~~\_\_\_\_\_ (9) to continue and reschedule hearings;~~
- ~~\_\_\_\_\_ (10) to consider and rule upon all procedural and other motions appropriate in proceeding;~~
- ~~\_\_\_\_\_ (11) to cause a complete record of proceedings in hearings to be made; and~~
- ~~\_\_\_\_\_ (12) to make and issue decisions and orders.~~

~~\_\_\_\_\_ C. In the performance of these functions, the hearing officer shall not be responsible to or subject to the supervision or direction of any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the department.~~

~~\_\_\_\_\_ D. In the performance of the adjudicative functions, the hearing officer is prohibited from ex parte discussions with either party on any matter relating to the complaint.~~

~~\_\_\_\_\_ E. Disqualification of a hearing officer:~~

~~\_\_\_\_\_ (1) When a hearing officer has substantial doubt as to whether he or she has a conflicting interest, the hearing officer shall disqualify himself or herself and withdraw from the hearing by notice on the record.~~

~~\_\_\_\_\_ (2) Whenever any party believes for any reason the hearing officer should be disqualified to preside in a particular proceeding, such party may file with the secretary a motion to disqualify and remove the hearing officer, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose removal is sought. The hearing officer shall have twenty five (25) days from such service within which to accede or to reply to the allegations. If the hearing officer does not disqualify himself or herself within that time, the secretary shall promptly review the validity of the grounds alleged and determine whether or not the hearing officer shall be disqualified. The secretary's decision shall be final.~~

~~\_\_\_\_\_ (3) If the hearing officer is disqualified, the secretary shall designate another person to act as hearing officer.] [RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.39 NMAC - Rn, 18 NMAC 19.4.10.11, 9/14/2000, Repealed, 5/24/2022]~~

#### **18.19.4.40 [HEARINGS—EVIDENCE:]**

~~\_\_\_\_\_ A. The appellant shall have the burden of proof, except in those cases where the department is the petitioner seeking to cancel, revoke or suspend a license or temporary permit and as otherwise provided by law.~~

~~\_\_\_\_\_ B. Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as is practicable. The hearing officer shall consider all evidence admitted.~~

~~\_\_\_\_\_ C. The hearing officer shall take judicial notice of facts and law to the extent provided in the New Mexico rules of civil procedure for district courts. When any decision of the hearing officer rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.~~

~~\_\_\_\_\_ D. Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the hearing officer on all objections shall appear in the record.~~

~~\_\_\_\_\_ E. Formal exception to an adverse ruling is not required.~~

~~\_\_\_\_\_ F. When an objection to a question propounded to a witness is sustained, the examining person may make a specific offer of what that person expects to prove by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.]~~

~~[RESERVED]~~

~~[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.40 NMAC - Rn, 18 NMAC 19.4.10.12, 9/14/2000, Repealed, 5/24/2022]~~

**18.19.4.41** ~~[HEARINGS—RECORD: Hearings shall be either stenographically recorded by an official reporter or mechanically recorded, as the hearing officer directs.]~~ **[RESERVED]**  
[7/19/1994, 9/14/1996; 18.19.4.41 NMAC - Rn, 18 NMAC 19.4.10.13, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.42** ~~[HEARINGS—PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS: At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or any party may file with the hearing officer proposed orders, proposed findings of fact and proposed conclusions of law, together with reasons therefor and briefs in support thereof.]~~ **[RESERVED]**  
[7/19/1994, 9/14/1996; 18.19.4.42 NMAC - Rn, 18 NMAC 19.4.10.14, 9/14/2000, Repealed, 5/24/2022]