

This is an amendment to 16.48.9 NMAC, Sections 7 and 12, effective 7/18/2023.

16.48.9.7 DEFINITIONS: As used in this Section, the following words and phrases have the following meanings:

- A.** “**Applicant**” has the same meaning as defined in Subsection B of Section 61-1-2 NMSA 1978.
 - B.** “**Complaint**” means a written complaint on a form provided by the department and filed with the department against a licensee or registrant.
 - C.** “**Complainant**” means the party who files a complaint against a licensee or registrant.
 - D.** “**Disqualifying criminal conviction**” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.
 - E.** “**Hearing**” means a formal evidentiary hearing conducted pursuant to the Uniform Licensing Act, whereby the respondent is afforded due process and the opportunity to be heard by the department, or its designated hearing officer, before the department takes action which might result in disciplinary action against the respondent’s application for license or registration, or respondent’s license or registration issued pursuant to the Private Investigations Act.
 - F.** “**Hearing officer**” means the person designated by the department at its discretion, to conduct hearings under the Uniform Licensing Act.
 - G.** “**Notice of contemplated action**” or “**NCA**” means the administrative pleading required by the Uniform Licensing Act whereby initiating a formal disciplinary proceeding and notifying a respondent of the department’s intent to take action based upon the violations of practice charged in the subject complaint, and providing the respondent the opportunity to request a hearing before the department.
 - H.** “**Pre-NCA settlement agreement**” means an agreement reached between the department and the respondent as an option in lieu of the department proceeding with referring the matter for issuance of a notice of contemplated action.
 - I.** “**Respondent**” means an applicant, licensee, or registrant that is the subject of complaint filed with the department.
 - J.** “~~Revoke a license~~ **Revocation**” has the same meaning as defined in Subsection ~~[D]~~ **J** of Section 61-1-2 NMSA 1978.
 - K.** “**Subject matter expert**” means a member of the private investigations profession or an advisory board member who has been designated to review complaints at the request of the superintendent.
 - L.** “~~Suspend a license~~ **Suspension**” has the same meaning as defined in Subsection ~~[E]~~ **K** of Section 61-1-2 NMSA 1978.
 - M.** “**Violation**” means a violation of the Private Investigations Act or the rules duly adopted by the department pursuant to the Private Investigations Act.
- [16.48.9.7 NMAC – N, 12/28/2021; A, 7/18/2023]

16.48.9.12 DEPARTMENT ACTION ON A COMPLAINT:

- A.** If the department determines after investigation, that there is not sufficient evidence or cause to issue a notice of contemplated action, or other disciplinary action, the case shall be closed and the department’s assigned compliance staff shall send a letter of the decision to both the complainant and respondent. The letter will state the department’s decision and that the decision is final unless new evidence is presented.
- B.** If the department determines that there is sufficient evidence or cause to issue a notice of contemplated action, the department may send a referral to the office of the attorney general by forwarding a complete copy of the investigation file, including exhibits, for assignment of an administrator prosecutor.
- C.** The department may take any other action with regard to a complaint which is within its authority, including referring the complaint to the attorney general for injunctive proceedings; or referring the complaint to the attorney general or a district attorney for criminal prosecution of persons alleged to be engaging in business regulated by the Private Investigations Act who fraudulently makes a representation as being a licensee or registrant, represents employment by a licensee, or violates a mandatory requirement set forth in statute or rule subject to criminal penalties.
- D.** At the discretion of the superintendent, the complaint may be referred to a subject matter expert or to the advisory board for review.

(1) Any appointed subject matter expert or advisory board member who believes that they are not capable of judging a particular complaint fairly on the basis of the member's own circumstances shall not participate in the decision to consider the facts and circumstances of the complaint or to issue a notice of contemplated action and must not participate in the final recommendation to the superintendent.

(2) Where the appearance of impropriety or any violation of the government conduct act may occur, an advisory board member shall recuse from any consideration of the complaint, the hearing, deliberation or recommendation to the decision of the department.

E. Before the issuance of a notice of contemplated action, the superintendent may authorize department staff to confer with the respondent for the purpose of seeking a pre-NCA settlement agreement. Any proposed pre-NCA settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent's attorney should sign the pre-NCA settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

F. After issuance of a notice of contemplated action, the administrative prosecutor may negotiate a settlement agreement with the respondent. Any proposed settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent's attorney should sign the settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

G. All disciplinary hearings shall be conducted in accordance with the Uniform Licensing Act. The superintendent will appoint a hearing officer to conduct the hearing.

(1) The hearing officer will be fully authorized to make all necessary procedural and evidentiary decisions on behalf of the department, including, but not limited to, matters related to discovery, continuances, time extensions, amendment, pre-hearing conferences, and proposed findings of fact and conclusions of law.

(2) The hearing officer may make such orders the hearing officer determines may be necessary to including but not limited to discovery schedules, pleading schedules, and briefing schedules.

(3) No party will engage in ex-parte communications with the hearing officer or any member of the advisory board or department staff in any matter in which a notice of contemplated action has been issued.

(4) Respondents who have been found culpable and sanctioned by the department may be ~~responsible for the payments of all administrative and investigative costs, and the costs of conducting the hearing~~ assessed a fine for each violation, not to exceed \$1,000 unless a greater amount is provided by law, pursuant to Subsection L of Section 61-1-3 NMSA 1978.

H. Pursuant to the Private Investigations Act and the Uniform Licensing Act, the department, in its sole and sound discretion, may impose any of the following penalties against a respondent upon a finding of a violation of the Private Investigations Act, the rules promulgated under the Private Investigations Act, or the Code of Ethics and Creed of Conduct adopted by the department, including for those acts of "unprofessional conduct" defined in 16.48.1.8 NMAC:

(1) denial of application for licensure;

(2) refusal to renew licensure;

(3) written reprimand;

(4) written censure;

(5) imposition of probationary conditions on a license for a specified time period;

(6) the requirement that the licensee or applicant complete a program of remedial education;

(7) corrective action as specified by the superintendent;

(8) suspension of a license;

(9) revocation of a license; and

(10) in addition to or in lieu of any of the foregoing, ~~payment of a fine for each violation found~~ the department may assess a fine for unlicensed activity, not to exceed ~~[\$1000]~~ \$10,000 for ~~[a]~~ each violation of the Private Investigations Act ~~[or against a]~~ by a person to have engaged in practice regulated by the department without appropriate license or registration ~~[in an amount not to exceed \$2000, unless a greater amount is provided by law].~~

I. A respondent whose license has been revoked may reapply for licensure one year from the effective date of the revocation.

(1) The department shall have discretion to approve or to reject any application for reinstatement of the license following the one year period of revocation.

(2) If the department determines that rejection of the application for reinstatement of the license will be considered, it shall do so only in accordance with the notice and hearing provisions of the Uniform Licensing Act.

(3) No application for reinstatement shall be granted unless all fines and costs assessments related to the license revocation proceeding shall have been paid in full.

[16.48.9.12 NMAC – N, 12/28/2021; A, 7/18/2023]