

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 48 PRIVATE LAW ENFORCEMENT PRACTITIONERS
PART 9 DISCIPLINARY PROCEEDINGS

16.48.9.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department
[16.48.9.1 NMAC – N, 12/28/2021]

16.48.9.2 SCOPE: This part applies to applicants, licensees, registrants and to anyone wishing to file a complaint against a licensee or registrant licensed or registered pursuant to the Private Investigations Act.
[16.48.9.2 NMAC – N, 12/28/2021]

16.48.9.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Private Investigations Act, Sections 61-27B-5 and 61-27B-26 NMSA 1978, and the Uniform Licensing Act, Sections 61-1-1 through 61-1-36 NMSA 1978.
[16.48.9.3 NMAC – N, 12/28/2021]

16.48.9.4 DURATION: Permanent.
[16.48.9.4 NMAC – N 12/28/2021]

16.48.9.5 EFFECTIVE DATE: December 28, 2021, unless a later date is cited in the history note at the end of a Section.
[16.48.9.5 NMAC – N, 12/28/2021]

16.48.9.6 OBJECTIVE: The objective of Part 9 of Chapter 48 is to set forth the procedures for filing complaints, for initiating disciplinary action against applicants, licensees, and registrants, to lay out the investigative procedures available to the department and to further define actions by an applicant, licensee or registrant considered as violations of the Private Investigations Act, the Uniform Licensing Act, and these rules.
[16.48.9.6 NMAC – N, 12/28/2021]

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. “Revocation”** has the same meaning as defined in Subsection 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. “Suspension” has the same meaning as defined in Subsection 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]

16.48.9.8 GENERAL PROVISIONS:

A. A complaint may be initiated in writing by any person on a complaint form provided by the department. A complaint must be legible, signed by the complainant under penalty of perjury, and must include the following information:

- (1) full name, mailing address, electronic mail address, and phone number of the complainant;
- (2) clearly stated factual allegations including the date, time, and location of the incident that is the subject matter of the complaint constituting the alleged violations of any provisions of the Private Investigations Act or Code of Ethics and Creed of Conduct, 16.48.1 NMAC;
- (3) a list of any other people that have information about the subject matter in the complaint, if any, and their full name, mailing addresses, and phone numbers, including electronic mail addresses if available; and
- (4) any documentation available to support the allegations in the complaint, any photographs submitted must be in color.

B. Only complaints written on the official complaint form will be formally addressed by the department. The form required for an official complaint may be obtained from the department’s website under the “file a complaint” tab, then select “boards and commissions complaint form”.

C. Private cause of action: Neither the action nor inaction of the department on any complaint shall preclude the initiation of any private cause of action by the complainant.
[16.48.9.8 NMAC – N, 12/28/2021]

16.48.9.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The department’s assigned compliance staff will maintain a written log of all complaints received which records at a minimum, the date the complaint was received; name, electronic mail and physical mailing address(es) of the complainant(s) and respondent(s); and the name, electronic mail and physical address(es) of all possible witnesses listed on the complaint.

B. Upon receipt of a complaint the department’s compliance staff will:

- (1) log in the date the complaint was received;
- (2) determine whether the respondent is licensed, registered or is an applicant for licensure or registration with the department;
- (3) assign a complaint number and create an individual file. Complaint numbering shall begin with 01 each calendar year;
- (4) after a legal review, send complainant written acknowledgment of receipt of the complaint and any follow up questions needed to clarify the complaint; and
- (5) send a copy of the complaint to the respondent(s) via electronic mail or certified U.S. mail to the address of record in the respondent’s file, unless the department reasonably determines that disclosure of the information in the complaint at that time, will substantially and materially impair the integrity or efficacy of the investigation.

[16.48.9.9 NMAC – N, 12/28/2021]

16.48.9.10 RESPONDING TO COMPLAINT:

A. The respondent must submit a written response to the department within 20 business days of receipt the complaint, and shall provide all necessary documents and exhibits in support of the response.

B. A failure to submit a written response to the department within the time frame specified may result in disciplinary action up to and including revocation of the license or registration at the discretion of the department.
[16.48.9.10 NMAC – N, 12/28/2021]

16.48.9.11 DEPARTMENT REVIEW AND INVESTIGATION OF COMPLAINTS:

A. The department will review and investigate all written, signed complaints against a respondent unless it is determined that there is insufficient evidence, cause, or jurisdiction to proceed.

B. If the department determines that further information is needed, the department may utilize an investigator or subject matter expert to review complaints as part of its investigation. The purpose of an investigation is to gather information regarding the complaint and to verify facts in the complaint.

C. Investigative Subpoenas: The department is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.

D. Upon completion of the investigation, the compliance staff or investigator will prepare a report which includes its factual findings and conclusions on any violations of the Private Investigations Act and rules, all relevant exhibits, and a recommendation to the superintendent as to a course of action regarding the compliant. [16.48.9.11 NMAC – N, 12/28/2021]

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 assessed a fine for each violation, not to exceed \$1,000.00 unless a greater amount is provided by law, pursuant to Subsection L of Section 61-1-3.

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, the department may assess a fine for unlicensed activity, not to exceed \$10,000 for each violation of the Private Investigations Act by a person to have engaged in practice regulated by the department without appropriate license or registration.

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]

16.48.9.13 DEPARTMENT REVIEW AND ACTION UPON APPLICANT BACKGROUND CHECK RESULTS:

A. The department will review each application received pursuant to 16.48.2 NMAC.

B. If the department determines that additional documentation is required because the application is not complete, or if the department has any questions about the application, the department may request that the applicant provide a written clarifying statement or additional documentation including any additional documents or written clarifying statements related to federal or department of public safety background check results.

C. The department will refer to the office of the attorney general for notice of contemplated action, any applications that produce evidence of a violation of the Private Investigations Act.

[16.48.9.13 NMAC – N, 12/28/2021]

16.48.9.14 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an individual from receiving or retaining a license or registration issued by the department, for:

(1) private investigations company, and private patrol company, includes individuals or all owners, officers or directors or members of the entity: a felony offense including an offense involving dishonesty or involving an intentional violent act or illegal use or possession of a deadly weapon;

(2) private investigator, and private investigations manager: a felony offense including an offense involving dishonesty or an intentional violent act or illegal use or possession of a deadly weapon;

(3) polygraph examiner: a felony involving an intentional violent act or the illegal use or possession of a deadly weapon;

(4) private patrol operator or private patrol operations manager: a felony offense including an offense involving dishonesty or intentional violent act or illegal use or possession of a deadly weapon;

(5) private investigations employee: a felony involving an intentional violent act or illegal use or possession of a deadly weapon; and

(6) security guard level one, level two, and level three: a felony offense, including an offense involving dishonesty or involving an intentional violent act or illegal use or possession of a deadly weapon.

B. The department 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.

C. Nothing in this rule prevents the department from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violates the Private Investigations 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.

D. In connection with an application for licensure, the department 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.

[16.48.9.14 NMAC – N, 12/28/2021]

16.48.9.15 DISCIPLINARY ACTIONS ARE PUBLIC RECORD: Any disciplinary action including complaints, witness statements, supporting documents, pre-NCA settlement agreements, or post-NCA settlement agreements, are public record unless expressly exempt under the Inspection of Public Records Act. Final pre-NCA settlement agreements and final orders issued by the superintendent may be posted on the department's website.

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

16.48.9.16 UNIFORM LICENSING ACT PROTECTION FROM LIABILITY FOR COMPLAINANT: Pursuant to Subsection G of Section 61-1-7 NMSA 1978, There shall be no liability on the part of, and no action for damages against, a person who provides information to the department in good faith and without malice in the reasonable belief that such information is accurate. An applicant, a licensee or registrant, who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the department shall be subject to disciplinary action.

[16.48.9.16 NMAC – N, 12/28/2021]

History of 16.48.9 NMAC: [RESERVED]