

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 64 FUNERAL HOMES AND DISPOSERS
PART 11 COMPLAINTS

16.64.11.1 ISSUING AGENCY: New Mexico Board of Funeral Services.
[2/21/1997, 1/22/1999; 16.64.11.1 NMAC - Rn & A, 16 NMAC 64.11.1, 9/15/2001; A, 8/8/2012]

16.64.11.2 SCOPE: 16.64.11 NMAC applies to licensees, applicants for licensure, and the general public.
[2/21/1997; 16.64.11.2 NMAC - Rn & A, 16 NMAC 64.11.2, 9/15/2001; A, 12/28/2021]

16.64.11.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.
[2/21/1997; 16.64.11.3 NMAC - Rn, 16 NMAC 64.11.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.4 DURATION: Permanent.
[2/21/1997; 16.64.11.4 NMAC - Rn, 16 NMAC 64.11.4, 9/15/2001]

16.64.11.5 EFFECTIVE DATE: February 21, 1997, unless a different date is cited at the end of a section.
[2/21/1997, A, 5-11-97; 16.64.11.5 NMAC - Rn & A, 16 NMAC 64.11.5, 9/15/2001]

16.64.11.6 OBJECTIVE: 16.64.11 NMAC establishes the procedures for filing and processing complaints, and for taking disciplinary action against licensees and applicants for licensure, for violations of provisions in the Funeral Services Act or any rule or regulation issued pursuant to the Act.
[2/21/1997; 16.64.11.6 NMAC - Rn, 16 NMAC 64.11.6, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.7 DEFINITIONS:

- A. "Complaint"** means a complaint filed with the board.
- B. "Complainant"** means the complaining party of a complaint filed against a licensee(s), or applicant for licensure, who is/are governed under the Funeral Services Act.
- C. "disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.
- D. "Respondent"** means an applicant for licensure, a licensee or other person subject to the provisions of the Funeral Services Act, and who is the subject of a complaint for claimed violations of the Act or any rule or regulation issued pursuant to the Act.
- E. "Notice of contemplated action"** means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing setting before the board has authority to take any action which would have the effect of denying, revoking, or suspending a license or application for licensure governed by the Uniform Licensing Act.
[2/21/1997; 16.64.11.7 NMAC - Rn, 16 NMAC 64.11.7, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.8 GENERAL PROVISIONS:

- A.** Any person, including any member of the board or board staff, may initiate a complaint in writing. Complaints should be submitted on a form prescribed by the board.
- B.** Complaints shall contain factual allegations constituting violations of any provisions of the Funeral Services Act or any rule or regulation issued pursuant to the Act.
[2/21/1997; 16.64.11.8 NMAC - Rn & A, 16 NMAC 64.11.8, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

16.64.11.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:

- A.** The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant and respondent.
- B.** Upon receipt of a complaint the board's designee will:
 - (1) log in the date the complaint was received;
 - (2) determine whether the respondent is licensed, or an applicant for licensure with the board;
 - (3) send the complainant written acknowledgment of receipt of the complaint; and

(4) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s). [2/21/1997, 1/22/1999; 16.64.11.9 NMAC - Rn, 16 NMAC 64.11.9, 9/15/2001; A, 4/2/2010]

16.64.11.10 COMPLAINT COMMITTEE:

A. The board chair will appoint a complaint committee consisting of at least one person, who will be a professional member on the board. The board chair may also appoint to the complaint committee the board administrator or a complaint manager.

B. The complaint committee will handle complaints in a confidential manner as required by law.

C. The complaint committee will review all complaints received by the board, conduct whatever action it deems necessary in the course of gathering information, and make recommendations for disposition of the complaint to the full board in executive session to maintain the confidentiality of the complaint.

D. No complaint committee meeting will be held without the presence of the professional board member.

E. A complaint committee member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate and another member will be appointed by the chair to serve on the committee if required.

F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint. The foregoing notwithstanding, the complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

G. If the complaint committee determines that further information is needed, it may issue investigative subpoenas, pursuant to the Uniform Licensing Act; employ an investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons, without prior approval of the board. The board administrator will determine budgetary availability, and will contract for investigative services.

H. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[2/21/1997, 1/22/1999; 16.64.11.10 NMAC - Rn & A, 16 NMAC 64.11.10, 9/15/2001; A, 12/28/2021]

16.64.11.11 BOARD ACTION:

A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case will be closed. The board's designee will send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

B. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action. The board's designee will forward a complete copy of the complaint file, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

C. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referrals to the attorney general and/or district attorney for prosecution of persons alleged to be practicing without a proper license.

D. Any board member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate in the decision whether to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

E. Members of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than making a recommendation to the board whether to issue a notice of contemplated action, and will not participate in the hearing, deliberation, or decision of the board.

[2/21/1997, 1/22/1999; 16.64.11.11 NMAC - Rn, 16 NMAC 64.11.11, 9/15/2001]

16.64.11.12 SETTLEMENT AGREEMENT: The board may enter into a settlement agreement with the respondent as a means of resolving the complaint. Any proposed settlement agreement must be approved by the board, and must be approved further by the respondent, upon a knowing and intentional waiver by the respondent of his or her right to a hearing as provided by the Uniform Licensing Act. The settlement agreement must be signed by the respondent and respondent's attorney, if represented by an attorney. If the respondent is not represented by an attorney then the respondent must acknowledge that he/she has been advised to seek the advice of an attorney.
[2/21/1997; 16.64.11.12 NMAC - Rn & A, 16 NMAC 64.11.12, 9/15/2001]

16.64.11.13 NOTICE OF CONTEMPLATED ACTION:

- A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.
 - B.** The chair of the board, or its designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedure decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.
 - C.** The hearing officer may make such orders as deemed necessary to implement the authority conferred by Subsection B of 16.64.11.13 NMAC, including, but not limited to, discovery schedules, pleading schedules, and briefing schedules.
 - D.** No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.
 - E.** Licensees and applicants for licensure who have been found culpable and sanctioned by the board will be responsible for the payment of all costs of the disciplinary proceedings.
 - F.** Any license, including a wall certificate, issued by the board and subsequently suspended or revoked, will be promptly returned to the board office, in person or by registered mail, no later than 30 days of receipt of the board's order suspending or revoking the license.
- [2/21/1997; 1/22/1999; 16.64.11.13 NMAC - Rn & A, 16 NMAC 64.11.13, 9/15/2001, A, 12/28/2021]

16.64.11.14 DISQUALIFYING CRIMINAL CONVICTIONS:

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

- (1) murder;
- (2) manslaughter;
- (3) assisting suicide;
- (4) aggravated assault;
- (5) assault with intent to commit a violent felony;
- (6) aggravated battery inflicting great bodily harm or with deadly weapon;
- (7) injury to a pregnant woman;
- (8) aggravated assault upon a school employee;
- (9) assault with intent to commit a violent felony upon a school employee;
- (10) aggravated battery upon a school employee;
- (11) aggravated battery upon a sports official;
- (12) aggravated assault upon a health care worker;
- (13) assault with intent to commit a violent felony upon a health care worker;
- (14) battery upon a health care worker;
- (15) aggravated battery upon a health care worker;
- (16) assisting or being assisted by one or more other persons to commit a battery upon a health care worker;
- (17) assault against a household member with intent to commit a violent felony;
- (18) aggravated battery against a household member;
- (19) 3rd or subsequent conviction for battery against a household member;
- (20) 2nd or subsequent conviction for stalking;

- (21) aggravated stalking;
- (22) kidnapping;
- (23) criminal use of ransom;
- (24) abandonment of a child resulting in death or great bodily harm;
- (25) abuse of a child;
- (26) negligent abuse of a child resulting in death;
- (27) intentional abuse of a child 12 to 18 years old resulting in death;
- (28) intentional abuse of a child less than 12 years old resulting in death;
- (29) sexual exploitation of children;
- (30) sexual exploitation of children by prostitution;
- (31) seizing or exercising control of a bus by force or violence or by threat of force or violence;
- (32) intimidating, threatening or assaulting any driver, attendant, guard or passenger of a bus with the intent of seizing or exercising control of a bus;
- (33) a felon in possession of a firearm;
- (34) false reporting, causing great bodily harm, of a fire or explosion or the placement of any incendiary device;
- (35) promoting prostitution;
- (36) accepting the earnings of a prostitute;
- (37) criminal sexual penetration;
- (38) criminal sexual contact;
- (39) criminal sexual contact of a minor;
- (40) aggravated indecent exposure;
- (41) incest;
- (42) disturbing a marked burial ground;
- (43) desecration of a church;
- (44) larceny;
- (45) robbery;
- (46) burglary;
- (47) aggravated burglary;
- (48) fraud;
- (49) unlawful dealing in federal food coupons or WIC checks;
- (50) embezzlement;
- (51) extortion;
- (52) forgery;
- (53) receiving stolen property;
- (54) falsely obtaining services or accommodations;
- (55) improper sale, disposal, removal or concealing of encumbered property;
- (56) shoplifting;
- (57) theft of identity;
- (58) theft of a credit card by taking or retaining possession of card taken;
- (59) fraudulent transfer or receipt of a credit card;
- (60) dealing in credit cards of another;
- (61) forgery of a credit card;
- (62) fraudulent signing of credit cards or sales slips or agreements;
- (63) fraudulent use of a credit card;
- (64) certain fraudulent acts by merchants or their employees;
- (65) possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
- (66) fraudulent acts to obtain or retain possession of rented or leased vehicle or other personal property;
- (67) fraudulent refusal to return a leased vehicle or other personal property;
- (68) unlawful taking of a vehicle or motor vehicle;
- (69) embezzlement of a vehicle or motor vehicle;
- (70) fraudulently obtaining a vehicle or motor vehicle;
- (71) receiving or transferring a stolen vehicle or motor vehicle;

- (72) altering or changing engine or other numbers of vehicle or motor vehicle;
- (73) arson or negligent arson;
- (74) aggravated arson;
- (75) transporting stolen livestock;
- (76) 3rd conviction for unlawful demonstrations or protests at funerals and memorial services;
- (77) sabotage;
- (78) escape from penitentiary;
- (79) possession of deadly weapon or explosive by prisoner in lawful custody;
- (80) assault with intent to commit a violent felony upon a peace officer;
- (81) battery upon a peace officer;
- (82) aggravated battery upon a peace officer;
- (83) disarming a peace officer;
- (84) paying or receiving public money for services not rendered;
- (85) unlawful interest in a public contract;
- (86) bribery of public officer or public employee;
- (87) demanding or receiving bribe by public officer or public employee;
- (88) bribery or intimidation of a witness;
- (89) retaliation against a witness;
- (90) acceptance of a bribe by a witness;
- (91) perjury;
- (92) tampering with public records;
- (93) attempt to commit a felony;
- (94) conspiracy;
- (95) criminal solicitation;
- (96) intentionally trafficking controlled substances;
- (97) intentionally distributing a controlled substance to a person under the age of eighteen years;
- (98) intentionally distributing or possessing with intent to distribute a controlled substance;
- (99) manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;
- (100) intentionally selling an imitation controlled substance to a person under the age of eighteen years;
- (101) intentionally possessing an imitation controlled substance with the intent to distribute;
- (102) issuing a worthless check;
- (103) child solicitation by electronic communication device;
- (104) criminal sexual communication with a child;
- (105) 2nd or subsequent unauthorized distribution of sensitive images;
- (106) failing to disclose facts or change of circumstances to obtain public assistance;
- (107) unlawful use of food stamp identification card or medical identification card;
- (108) misappropriating public assistance;
- (109) making or permitting a false claim for reimbursement of public assistance services;
- (110) failure to reimburse the human services department upon receipt of third party payment;
- (111) soliciting or receiving illegal kickback;
- (112) offering or paying illegal kickback;
- (113) engaging in a pattern of racketeering activity;
- (114) making, conspiring, or attempting to make an extortionate extension of credit;
- (115) knowingly advancing money or property to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced for the purpose of making extortionate extensions of credit;
- (116) knowingly participating, conspiring, or attempting to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the person, reputation or property of any person for the nonpayment thereof;
- (117) falsification of documents in connection with the Medicaid Fraud Act;
- (118) obstruction of investigation in connection with the Medicaid Fraud Act;

- (119) medicaid fraud;
- (120) computer access with intent to defraud or embezzle;
- (121) computer abuse;
- (122) abuse of a care facility resident;
- (123) neglect of a care facility resident;
- (124) exploitation of a care facility resident's property;
- (125) fraudulent telemarketing;
- (126) money laundering;
- (127) human trafficking;
- (128) willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (129) willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (130) homicide by vehicle;
- (131) great bodily harm by vehicle;
- (132) injury to pregnant woman by vehicle;
- (133) 4th or subsequent driving under the influence of intoxicating liquor or drugs;
- (134) practicing medicine without a license;
- (135) making a false statement under oath, or submitting a false affidavit, in connection with the Medical Practice Act;
- (136) knowingly and willfully obtain information on a consumer from a credit bureau under false pretenses; or knowingly and willfully provide information concerning a consumer from the credit bureau's files to a person or firm not authorized to receive that information;
- (137) knowingly and willfully obtain information on a consumer from a credit bureau under false pretenses; or knowingly and willfully provide information concerning a consumer from the credit bureau's files to a person or firm not authorized to receive that information;
- (138) offering a bribe connected with or incidental to any election;
- (139) willful violation of any provision of the Model State Commodity Code;
- (140) willful violation of the New Mexico Uniform Securities Act;
- (141) an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act;
- (142) knowing violation of any provision of the Savings and Loan Act, with intent to defraud;
- (143) certain acts by credit union executive officer, director, committee member, employee or agent;
- (144) maliciously and knowingly spreading false reports or uttering false statements about the management or finances of any credit union;
- (145) making a false statement in writing for the purpose of obtaining credit union funds;
- (146) the supervisor or any examiner, inspector, deputy, assistant or clerk appointed or acting under the provisions of the Savings and Loan Act who fails to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the officer or employee requires him to report upon or take official action regarding the affairs of the association examined, or who willfully makes a false official report as to the condition of an association;
- (147) any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent;
- (148) any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent;
- (149) certain violations of the Mortgage Loan Company Act;
- (150) second or subsequent conviction for unlicensed activity contrary to the New Mexico Mortgage Loan;
- (151) violation of the Endowed Care Cemetery Act;

- (152) certain violations of the Mortgage Loan Company Act;
- (153) certain violations of the Uniform Money Services Act;
- (154) making an unauthorized withdrawal from the account of another person with a financial institution, or stealing the card of another, or making an unauthorized use of the card of another;
- (155) use of a name or title containing the phrase "credit union" or any derivation thereof, representing a business or individual as a credit union or conducting business as a credit union except as permitted by law;
- (156) practicing or attempting to practice dentistry without complying with the Dental Health Care Act and without holding license to practice dentistry in New Mexico;
- (157) practicing, attempting or offering to practice osteopathic medicine with a suspended or revoked osteopathic medicine license;
- (158) practicing or attempting to practice osteopathic medicine without complying with the Osteopathic Medicine Act and without holding a license;
- (159) intent to defraud uses on a public security or instrument of payment;
- (160) misuse of public funds;
- (161) bribery of public officer or public employee;
- (162) misuse of public funds;
- (163) tax Fraud;
- (164) requesting money, thing of value or promise in exchange for performance of official act;
- (165) official act for personal gain;
- (166) excavation of unmarked burials w/o permit;
- (167) provides false information or violates provisions of Vital Statistics Act;
- (168) intentionally falsifies, forges, conceals, defaces or obliterates a document of anatomical gift, an amendment or revocation of a document of an anatomical gift, or a refusal, for personal gain, commits a third degree felony;
- (169) knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death;
- (170) making false statement in claim for payment under Indigent Hospital and County Health Care Act;
- (171) unauthorized obtain or use of DNA samples or DNA records;
- (172) sex offender who fails to comply with SORNA re moving to another state;
- (173) certain violations of the Hazardous Waste Act;
- (174) certain violations of the Air Quality Control Act;
- (175) certain violations of the Solid Waste Act;
- (176) injuring or threatening to injure a customer's credit because the customer refuses to pay charges resulting from cramming or slamming (telecommunications services);
- (177) giving false testimony or information as to any matter material to an examination by the Superintendent of Insurance;
- (178) willfully making a false or fraudulent statement in any verified report or declaration under oath in connection with fraternal benefit societies;
- (179) making a false entry in a book, report or statement of an insurer with intent to injure, defraud, or deceive;
- (180) unlawfully removing or attempting to remove records, assets, or material from a domestic insurer;
- (181) certain violations of the Sale of Insurance Securities Law;
- (182) making a false statement in connection with insurance with the effect of causing a loss to the insurer;
- (183) improper disposition of certain court funds;
- (184) jury tampering;
- (185) an officer of a company who certifies that a document is true and correct, knowing the same to be false, or any person who forges the name of an officer the seal of a company

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure or for renewal of licensure unless the conviction under consideration is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend, revoke, not renew a license or otherwise exclude from licensure a person on the sole basis of a criminal conviction unless the conviction under consideration is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule shall prevent the board from denying an application for licensure or for renewal of licensure, or from disciplining a licensee, on the basis of a person's conduct, to the extent that such conduct violated the Funeral Services Act, regardless of whether the person was convicted of a crime for such conduct or whether the crime for which the person was convicted is listed as one of the disqualifying criminal convictions in Subsection A of this rule.

E. In connection with an application for licensure or for renewal of licensure, the board shall not use, distribute, disseminate, or admit into evidence at an administrative 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.

[16.64.11.14 NMAC, N, 12/28/2021]

HISTORY OF 16.64.11 NMAC:

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

Regulation No. 15, Complaints, 8/28/1990.

Regulation 15, Complaints, 4/15/1991.

Reg. 3, Complaints, 8/27/1993.

History of Repealed Material: [RESERVED]