

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 48 PRIVATE LAW ENFORCEMENT PRACTITIONERS
PART 1 GENERAL PROVISIONS

16.48.1.1 ISSUING AGENCY: Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.1.1 NMAC - Re-pr, 16.48.1.1 NMAC, 9/24/2008]

16.48.1.2 SCOPE: This part applies to the board, licensees, registrants, applicants, and the general public.

[16.48.1.2 NMAC - Re-pr, 16.48.1.2 NMAC, 9/24/2008]

16.48.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Private Investigations Act, Sections 61-27B-2, 61-27B-3, 61-27B-4, 61-27B-5, 61-27B-12, 61-27B-22, 61-27B-28 and 61-27B-29 NMSA 1978.

[16.48.1.3 NMAC - Re-pr, 16.48.1.3 NMAC, 9/24/2008]

16.48.1.4 DURATION: Permanent.

[16.48.1.4 NMAC - Re-pr, 16.48.1.4 NMAC, 9/24/2008]

16.48.1.5 EFFECTIVE DATE: September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.1.5 NMAC - Re-pr & A, 16.48.1.5 NMAC, 9/24/2008]

16.48.1.6 OBJECTIVE: To define terms relevant to private investigations, when a license is required, persons exempted, custody and alteration of license, transferability, display of license, notification of changes, local regulations, and professional ethical standards.

[16.48.1.6 NMAC - Re-pr, 16.48.1.6 NMAC, 9/24/2008]

16.48.1.7 DEFINITIONS: As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

- A. “act”** means the New Mexico Private Investigations Act;
- B. “alarm company”** means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;
- C. “applicant”** means any natural person who is applying for registration or licensure pursuant to the private investigations act;
- D. “armored car company”** means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;
- E. “board”** means the New Mexico private investigations advisory board;
- F. “bodyguard”** means an individual who physically performs the mission of personal security for another individual;
- G. “branch office”** means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager;
- H. “charts”** means a continuous recording of the physiological changes in human respiration, cardiovascular activity and skin resistance or conductance;
- I. “client”** means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;
- J. “conviction”** means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- K. “department”** means the regulation and licensing department;
- L. “good moral character”** means a personal history characterized by honesty, fairness and respect for the rights of others and for state and federal law;
- M. “individual”** means a single human being;
- N. “legal business entity”** means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes;
- O. “licensee”** means a person licensed pursuant to the Private Investigations Act;

P. “polygraph examiner” means an individual licensed by the department to engage in the practice of polygraphy;

Q. “polygraph examination” also referred to as a psychophysiological detection of deception (PDD) means a test or series of tests designed to assess the truthfulness of an examinee to an issue or issues of concern and includes all charts, reports, allied documents and recordings generated or received regarding the testing procedures;

R. “polygraph instrument” means a mechanical or digital computer instrument that, at a minimum, records simultaneously physiological changes in human respiration, skin resistance or conductance, and cardiovascular activity including relative blood pressure or volume;

S. “polygraphy” means the process of employing an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results or any other device used to measure truthfulness;

T. “private investigation company” means a legal business entity that provides private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico;

U. “private investigator” means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) a person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties;

(5) the securing of evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or

(6) the scene of a motor vehicle accident or evidence related to a motor vehicle accident;

V. “private investigations employee” means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company performing all private investigator duties;

W. “private investigations manager” means an individual who:

(1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;

(2) directs, controls or manages a private investigation company for the owner of the company; and

(3) is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;

X. “private patrol company” means a legal business entity, the location of which may be within or outside of the state, including an independent or proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards;

Y. “private patrol operations employee” means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;

Z. “private patrol operations manager” means an individual who:

(1) is licensed as a private patrol operator or registered as a level three security guard, is issued a license by the department as a private patrol operations manager and is a New Mexico resident;

(2) directs, controls or manages a private patrol company for the owner of the company; and

(3) is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;

AA. “private patrol operator” means an individual who is licensed by the department to:

(1) conduct uniformed or non-uniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the services required of a security guard or security dog handler or provide security services for an armored car company;

BB. “proprietary commercial organization” means an organization or division of an organization that provides full- or part-time security guard services solely for itself;

CC. “provisional license” means a license to practice polygraphy for the probationary period that is required to determine operational competency;

DD. “registrant” means an individual registered as a private investigations employee, a private patrol operations employee or a security guard at any level;

EE. “screening examination” means any examination that is non-specific and deals with general background information;

FF. “security dog handler” means an individual who patrols with dogs to detect illegal substances or explosives;

GG. “security guard” means an individual who is registered to engage in uniformed or non-uniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect life and property or prevent thefts; and

HH. “sponsor” means a licensed polygraph examiner;

II. “special event” means a parade or other public or private event of short duration requiring security;

JJ. “specific event examination” means any examination that deals with a specific issue, crime or incident, criminal or otherwise;

KK. “superintendent” means the superintendent of the regulation and licensing department;

LL. “test data” means the physiological data recorded or collected during a polygraph examination;

MM. “test data analysis” means the quantitative application of standardized scoring rules to the physiological test data and includes the use of computerized scoring programs.

[16.48.1.7 NMAC - Re-pr, 16.48.1.7 NMAC, 9/24/2008; A, 1/15/2019]

16.48.1.8 CODE OF ETHICS AND CREED OF CONDUCT:

A. Code of ethics for private security management. As managers of private security functions and employees, we pledge:

- (1)** to recognize that our principal responsibilities are, in the services of our organizations and clients, to protect life and property as well as to prevent and reduce crime against our business, industry, or other organizations and institutions; and in the public interest, to uphold the law and to respect the constitutional rights of all persons;
- (2)** to be guided by a sense of integrity, honor, justice and morality in the conduct of business; in all personnel matters; in relationships with government agencies, client and employers; and in responsibilities to general public;
- (3)** to strive faithfully to render security services of the highest quality and to work continuously to improve our knowledge and skills and thereby improve the overall effectiveness of private security;
- (4)** to uphold the trust of our employers, our clients, and the public by performing our function within the law, nor ordering or condoning violations of law, and ensuring that our security personnel conduct their assigned duties lawfully and with proper regard for the rights of others;
- (5)** to respect the reputation and practice of others in the private security field, but to expose to the proper authorities any conduct that is unethical or unlawful;
- (6)** to apply uniform and equitable standards of employment in recruiting and selecting personnel regardless of race, creed, color, sex or age and in providing salaries commensurate with job responsibilities and with training, education and experience;
- (7)** to cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with security licensing and registration laws and other statutory requirements that pertain to our business;
- (8)** to respect and protect the confidential and privileged information of employers and clients beyond the terms of our employment, except where their interests are contrary to law or to this code of ethics;
- (9)** to maintain a professional posture in all business relationships with employers, and clients, with others in the private security field, and with members of other professions; and to insist that our personnel adhere to the highest of professional conduct;
- (10)** to encourage the professional advancement of our personnel by assisting them to acquire appropriate security knowledge, education and training;

B. Code of ethics for private security employees. In recognition of the significant contribution of private security to crime prevention and reduction, as a private security guard, I pledge:

- (1) to accept the responsibilities and fulfill the obligations of my role: protecting life and property; preventing and reducing crimes against my employer's business, or other organizations and institutions to which I am assigned; upholding the law; and respecting the constitutional rights of all persons;
- (2) to conduct myself with honesty and integrity and to adhere to the highest moral principles in the performance of my security duties;
- (3) to be faithful, diligent and dependable in discharging my duties, and to uphold at all times the laws, policies, and procedures that protect the rights of others;
- (4) to observe the precepts of truth, accuracy, and prudence without allowing personal feelings, prejudices, animosities or friendships to influence my judgments;
- (5) to report to my superiors, without hesitation, any violation of the law or of my employer's or client's regulation;
- (6) to respect and protect the confidential and privileged information of my employer or client beyond the term of my employment, except where their interests are contrary to law or to this code of ethics;
- (7) to cooperated with all recognized and responsible law enforcement and government agencies in matters within their jurisdiction;
- (8) to accept no compensation, commission, gratuity or other advantage without the knowledge and consent of my employer;
- (9) to conduct myself professionally at all times, and to perform my duties in a manner that reflects upon myself, my employer, and private security;
- (10) to strive to continually to improve my performance by seeking training and educational opportunities that will better prepare me for my private security duties.

C. Code of ethics for polygraph examiners.

- (1) I shall at all times conduct myself in a manner reflecting credit to the polygraph profession.
- (2) I shall deal fairly and impartially with all individuals, regardless of social, political, racial, religious, ethnic, economic or fraternal status.
- (3) I shall keep all decisions free of personal or any other extraneous influence and render unbiased opinion in all decisions.
- (4) I shall not publish misleading advertisements or claims concerning the polygraph profession. I shall advise each client or examinee of the infeasibility of conducting an examination where I encounter conditions or circumstances that so warrant.
- (5) I shall not conduct a polygraph examination of any person I have reason to believe may be mentally or physically unfit, without first seeking an opinion of medical, psychological or psychiatric authority, as appropriate, prior to testing.
- (6) I shall not include an opinion in any decision or report relating to medical, psychological, psychiatric, legal, or any other field in which I am not qualified.
- (7) I shall refrain from criticizing or maligning other polygraph examiners except as required by legal proceedings.
- (8) I shall not testify concerning polygraph charts of another examiner until I have satisfied the requirements of NM Rule of Evidence 11-707, NMRA 2004.
- (9) I shall support the professional goals of the polygraph profession at every opportunity.
- (10) I shall consider the integrity and goals of the polygraph profession above my personal desires and ambitions.

D. Polygraphy creed of conduct: To encourage uniformity of procedures, enhance the image of polygraphy, promote the welfare of the public, establish standards and promote an understanding among all polygraphers operating in the state of New Mexico, the following standards of principle are endorsed.

- (1) The primary goal of a polygraph examination is to assess truth or deception, respecting all rights of the examinee and using proper polygraph techniques and procedures.
- (2) No examinee will be compelled to take a polygraph examination except in compliance with existing law or terms of probation or parole. No force, threats, duress, coercion or promises will be made by a licensee in an effort to complete a polygraph examination.
- (3) A minimum of three charts is required to reach a conclusive diagnostic opinion in any polygraph examination conducted by a licensee.

(4) Inquiries into the personal life, sexual habits, political or religious principles, or any other aspects of one's life that are not connected to, or necessary for, addressing the issue concerned will not be made.

(5) Examinations addressing secondary aspects of an unresolved direct issue will not be made merely to avoid or circumvent addressing a primary issue or to satisfy the personal desires of the examinee or client.

(6) Information concerning polygraph examinations will not be released to unauthorized persons. This does not preclude consultation with other examiners, or testimony before legal proceeding or other duly constituted authority, or information requested by the department.

(7) It is the responsibility of each examiner to promote proper polygraph procedures. Knowledge of deliberate violations of the law governing polygraphy should be brought to the attention of the department and any relevant national professional association for consideration and action, if appropriate.
[16.48.1.8 NMAC - Re-pr, 16.48.1.8 NMAC, 9/24/2008]

16.48.1.9 SAVINGS CLAUSE: If any provision of these rules or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.
[16.48.1.9 NMAC - Re-pr, 16.48.1.9 NMAC, 9/24/2008]

16.48.1.10 PRACTICING WITHOUT A LICENSE: It is unlawful for an individual to:

A. act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or private patrol operation employee to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act (Section 61-27B-1 NMSA 1978);

B. render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

C. continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager, private patrol operations manager private patrol operation employee if the individual's license issued pursuant to the Private Investigations Act has expired or been suspended or revoked;

D. falsely represent that the individual is employed by a licensee; or

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act.

[16.48.1.10 NMAC - Re-pr & A, 16.48.1.10 NMAC, 9/24/2008; A, 1/15/2019]

16.48.1.11 LICENSURE EXEMPTIONS:

A. As used in this section, "temporary" means a period of time not to exceed the duration of one private event or one school or nonprofit organization event, as described in Paragraphs (2) and (3) of Subsection B of this section.

B. The Private Investigations Act does not apply to:

(1) an individual employed exclusively and regularly by one employer in connection with the affairs of that employer, provided that the individual patrols or provides security only on the premises of the employer as limited by the employer;

(2) an individual employed exclusively to provide temporary security at a private event that is not open to the public;

(3) individuals providing temporary security at athletic or other youth events and where the events occur under the auspices of a public or private school or a nonprofit organization;

(4) an attorney licensed in New Mexico conducting private investigations while engaged in the practice of law;

(5) an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of the officer's or employee's official duties or an employee working exclusively on federal government property for a private patrol company contracting with the federal government and the security guard has training that exceeds state requirements unless the federal government contract requires state licensing;

(6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

(7) a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

(8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;

(9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

(10) an institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

[16.48.1.11 NMAC - Re-pr & A, 16.48.1.11 NMAC, 9/24/2008]

16.48.1.12 CUSTODY AND ALTERATION OF LICENSES:

A. Licenses and registrations issued by the department are at all times the property of the department, and may remain in the custody of the licensee or registrant only as long as the licensee or registrant complies with the act and department rules.

B. Licenses shall not be altered in any way.

C. Inspectors or board designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment.

[16.48.1.12 NMAC - Re-pr, 16.48.1.12 NMAC, 9/24/2008]

16.48.1.13 LICENSE NOT TRANSFERABLE; CHANGE IN OWNERSHIP OR MANAGEMENT; NAME CHOICE AND NAME CHANGE:

A. A license or registration issued by the department pursuant to the Private Investigations Act shall not be transferred or assigned.

B. A change of ownership or management of a private investigation company or private patrol company shall be filed with the department on an application form prescribed by the department, accompanied by the required fees, within 30 days following any such change. Failure to file for a change of a private investigation company or private patrol company within the 30 day period shall be grounds for termination of the license of a private investigation company or private patrol company.

C. A change in the name of a private investigation company or private patrol company shall require a name change application on a form provided by the department. A private investigation company or a private patrol company shall not conduct business under a fictitious name until the company has obtained the authorization for use of the name from the department. The department shall not authorize the use of a fictitious name that may generate public confusion with the name of a public officer or agency or the name of an existing private investigation company or private patrol company.

[16.48.1.13 NMAC - Re-pr, 16.48.1.13 NMAC, 9/24/2008]

16.48.1.14 DISPLAY OF LICENSE AND NOTIFICATION OF CHANGES:

A. A license shall at all times be posted in a conspicuous place in the New Mexico principal place of business of the licensee.

B. A copy of the registration of each registrant employed by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant works.

C. A registration card issued by the department shall at all times be in the possession of and located on the person of a registrant when working.

D. A security guard shall wear the registration card on the outside of the guard's uniform so that the card is visible to others.

E. A licensee or a registrant shall notify the department immediately in writing of a change in the mailing or contact address of the licensee or registrant.

F. Failure to notify the department within 30 days of changes required to be reported pursuant to this section or failure to carry or display a registration as required is grounds for suspension of a license or registration.

[16.48.1.14 NMAC - Re-pr & A, 16.48.1.14 NMAC, 9/24/2008; A, 1/15/2019]

16.48.1.15 LOCAL REGULATIONS: The provisions of the Private Investigations Act (Section 61-27B-1 NMSA 1978) shall not prevent the local authorities of a city or county by ordinance and within the exercise of the

police power of the city or county from imposing local ordinances upon a street patrol special officer or on a person licensed or registered pursuant to the Private Investigations Act if the ordinances are consistent with that act. [16.48.1.15 NMAC - Re-pr, 16.48.1.15 NMAC, 9/24/2008]

HISTORY OF 16.48.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

AG 68-1 (Rule No. IV), Private Patrol Operator Licenses, filed 4/3/1968.

AG 68-2 (Rule No. V), Private Investigator Licenses, filed 4/3/1968.

AG 69-2 (Rule No. VII), Private Investigators Licenses: Titles, filed 9/17/1969.

AG 70-2 (Rule No. VII), Private Investigators: Fictitious Names and Titles, filed 8/20/1970.

AG 69-3 (Rule No. VIII), Private Investigator Licenses: Interview of Applicant, filed 9/17/1969.

AG 70-3 (Rule No. VIII), Private Investigators: Interview of Applicant, filed 8/20/1970.

AG 70-5 (Rule No. X, Private Investigators: Alcohol Beverages, filed 8/20/1970.

AG 70-7 (Rule No. XII), Private Investigators: Deputy Sheriff Commissions, filed 11/19/1970.

AG 70-8 (Rule NO. XIII), Private Investigators: Cessation of Licensed Business, filed 11/19/1970

NMLEA Rule #30, Bureau of Private Investigators: Rules and Regulations, filed 4/24/1981.

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations, filed 11/4/1983.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 6/1/1981.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 5/27/1983.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 6/1/1981.

NMPA Rule 92-1, Authority, filed 8/17/1992; NMPA Rule 92-2, Definitions, filed 8/17/1992; NMPA Rule 92-11, Code of Ethics and Creed of Conduct, filed 8/17/1992 and NMPA Rule 92-13, Savings Clause, filed 8/17/1992 (by NM Polygraph Advisory Board).

History of Repealed Material:

NMLEA B/PI Rule #1 (filed 11/04/1983), repealed 03/07/2008.

NMPA Rule 92-1 (filed 8/17/1992); NMPA Rule 92-2 (filed 8/17/1992); NMPA Rule 92-6 (filed 8/17/1992);

NMPA Rule 92-11 (filed 8/17/1992); and NMPA Rule 92-13 (filed 8/17/1992), all repealed 03/07/2008.

This rule expired on July 5, 2008 which was 120 days after its emergency filing on March 7, 2008. The Uniform Licensing Act (Subsection A of Section 61-1-30 NMSA 1978) stipulates that emergency rules cannot remain in effect for more than 120 days unless they are replaced by permanent rules.

Other History:

Those applicable portions of NMLEA B/PI Rule #1 (filed 11/04/1983); NMPA Rule 92-1 (filed 8/17/1992); NMPA Rule 92-2 (filed 8/17/1992); NMPA Rule 92-6 (filed 8/17/1992); NMPA Rule 92-11 (filed 8/17/1992); and NMPA Rule 92-13 (filed 8/17/1992), renumbered, reformatted, and replaced by 16.48.1 NMAC, Private Law Enforcement Practitioners - General Provisions, effective 03/07/2008.

16.48.1 NMAC, Private Law Enforcement Practitioners - General Provisions (filed 3/7/2008) was replaced by

16.48.1 NMAC, Private Law Enforcement Practitioners - General Provisions, effective 9/24/2008.