

**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.  
[2-21-97, 1-22-99; 16.64.11.1 NMAC - Rn & A, 16 NMAC 64.11.1, 09-15-01; A, 08-08-12]

**16.64.11.2 SCOPE:** 16.64.11 NMAC applies to the board, licensees, applicants for licensure, and the general public.  
[2-21-97; 16.64.11.2 NMAC - Rn & A, 16 NMAC 64.11.2, 09-15-01]

**16.64.11.3 STATUTORY AUTHORITY:** 16.64.11 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-24 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.  
[2-21-97; 16.64.11.3 NMAC - Rn, 16 NMAC 64.11.3, 09-15-01; A, 08-08-12]

**16.64.11.4 DURATION:** Permanent.  
[2-21-97; 16.64.11.4 NMAC - Rn, 16 NMAC 64.11.4, 09-15-01]

**16.64.11.5 EFFECTIVE DATE:** February 21, 1997, unless a different date is cited at the end of a section.  
[2-21-97, A, 5-11-97; 16.64.11.5 NMAC - Rn & A, 16 NMAC 64.11.5, 09-15-01]

**16.64.11.6 OBJECTIVE:** 16.64.11 NMAC is to establish the procedures for filing and processing complaints and for taking disciplinary action against licensees and applicants for licensure, for violation of the Funeral Services Act or any provisions of 16.64 NMAC.  
[2-21-97; 16.64.11.6 NMAC - Rn, 16 NMAC 64.11.6, 09-15-01; A, 08-08-12]

**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. **“Respondent”** means a licensee, or applicant for licensure who is governed under the Funeral Services Act and who is the subject of a complaint.
- D. **“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.

[2-21-97; 16.64.11.7 NMAC - Rn, 16 NMAC 64.11.7, 09-15-01; A, 08-08-12]

**16.64.11.8 GENERAL PROVISIONS:**

- A. **Inquiries regarding making a complaint:** 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 must contain factual allegations, constituting the alleged violations of any provisions of the Funeral Services Act or 16.64 NMAC.

[2-21-97; 16.64.11.8 NMAC - Rn & A, 16 NMAC 64.11.8, 09-15-01; A, 08-08-12]

**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).

[2-21-97, 1-22-99; 16.64.11.9 NMAC - Rn, 16 NMAC 64.11.9, 09-15-01; A, 04-02-10]

**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 and/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.

[2-21-97, 1-22-99; 16.64.11.10 NMAC - Rn & A, 16 NMAC 64.11.10, 09-15-01]

**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.

[2-21-97, 1-22-99; 16.64.11.11 NMAC - Rn, 16 NMAC 64.11.11, 09-15-01]

**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. [2-21-97; 16.64.11.12 NMAC - Rn & A, 16 NMAC 64.11.12, 09-15-01]

**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 his/her 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 he/she determines may be 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.
- [2-21-97; 1-22-99; 16.64.11.13 NMAC - Rn & A, 16 NMAC 64.11.13, 09-15-01]

**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, 8-28-90.

Regulation 15, Complaints, 4-15-91.

Reg. 3, Complaints, 8-27-93.

History of Repealed Material: [Reserved]