

TITLE 14: HOUSING AND CONSTRUCTION
CHAPTER 5: CONSTRUCTION INDUSTRIES GENERAL PROVISIONS
PART 8: INVESTIGATIONS AND ENFORCEMENT

14.5.8.1 ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department.
[14.5.8.1 NMAC - N, 12/13/2014]

14.5.8.2 SCOPE: Discipline for all licensees, applicants, certificate holders and unlicensed contractors.
[14.5.8.2 NMAC - N, 12/13/2014]

14.5.8.3 STATUTORY AUTHORITY: Sections 60-13-23, 60-13-23.1, 60-13-24 and Subsection C of 60-13-27 NMSA 1978.
[14.5.8.3 NMAC - N, 12/13/2014]

14.5.8.4 DURATION: Permanent.
[14.5.8.4 NMAC - N, 12/13/2014]

14.5.8.5 EFFECTIVE DATE: December 13, 2014, unless a later date is cited at the end of a section.
[14.5.8.5 NMAC - N, 12/13/2014]

14.5.8.6 OBJECTIVE: To provide administrative procedures for the discipline of licensees, applicants, certificate holders and unlicensed contractors.
[14.5.8.6 NMAC - N, 12/13/2014]

14.5.8.7 DEFINITIONS: See 14.5.1.7 NMAC for definitions.
[14.5.8.7 NMAC - N, 12/13/2014; A, 3/10/2022]

14.5.8.8 VIOLATIONS:

A. An action by a licensee or certificate holder that is contrary to any of the following provisions, the CILA, the Liquefied Petroleum Gas and Compressed Natural Gas Act, Sections 70-5-1 through 70-5-23 NMSA 1978, the Manufactured Housing Act, Sections 60-14-1 through 60-14-20, NMSA 1978, or any rule promulgated by the commission, may subject the licensee to disciplinary action.

- (1) Gross incompetence or gross negligence.
- (2) Failure to maintain financial responsibility.
- (3) Failure to maintain worker compensation insurance.
- (4) Performing, or holding one- self out as able to perform, professional services beyond the scope of one's license and field or fields of competence.
- (5) Contracting without displaying his/her full name as it appears on the license issued by the division.
- (6) Advertising a classification or trade in which a contractor is not licensed by the division.
- (7) Advertising a service in a false, fraudulent or misleading manner.
- (8) The use of a false, fraudulent or deceptive statement in any document connected with construction bids, licensing, inspections or permitting.
- (9) Fraud, deceit or misrepresentation in any application.
- (10) Violation of any order of the commission.
- (11) Cheating on an examination for licensure.
- (12) Failure to cooperate in an investigation.
- (13) Obstruction of an investigator or an inspector in carrying out their duties.
- (14) Aiding and abetting unlicensed contracting.
- (15) Contract or job abandonment activity as determined by a court of competent jurisdiction.
- (16) Failure to meet and maintain requirements for crossover licensure for multidisciplinary registration, certificates or licenses.
- (17) Failure to be in compliance with the Parental Responsibility Act.

B. If the commission or an informal hearing officer determines that a licensee violated any provision of this subsection, the commission or an informal hearing officer may: issue letter of reprimand, deny, revoke,

suspend, or otherwise limit a license; assess an administrative penalty; require licensees to fulfill continuing education hours within limited time constraints; or any combination of the above.

C. Potential suspension or revocation of a license or certification based on a disqualifying criminal conviction.

(1) Pursuant to Section 28-2-4 NMSA 1978, the construction industries commission may revoke or suspend a license or certificate if the licensee or certificate holder has been convicted of a felony and the criminal conviction directly relates to the particular trade, business or profession.

(2) The construction industries commission shall not revoke or suspend a license or certificate on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (4) of this rule.

(3) In connection with the suspension or revocation of a license or certificate, the commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (a) a conviction that has been sealed, dismissed, expunged or pardoned;
- (b) a juvenile adjudication; or
- (c) a conviction for any crime other than the disqualifying criminal convictions

listed in Paragraph (4) of this rule.

(4) Disqualifying felony criminal convictions that may allow the denial of licensure or certification or the denial of renewal of licensure or certification, whether in New Mexico or their equivalent in any other jurisdiction include:

- (a) conviction involving attempts to evade or defeat payment of a tax that is owed or may be lawfully assessed;
- (b) conviction involving physical harm to a person or for an attempt, conspiracy or solicitation to commit such crimes;
- (c) robbery, larceny, burglary, fraud, forgery, embezzlement, arson, theft of identity, extortion, racketeering or receiving stolen property or for an attempt, conspiracy or solicitation to commit such crimes;
- (d) conviction involving bribery of a public officer or public employee or for an attempt, conspiracy or solicitation to commit such crimes.

(5) A licensee or certificate holder may submit a written justification providing evidence of mitigation or rehabilitation for consideration by the construction industries commission should discipline proceed or be anticipated based on a disqualifying criminal conviction.

(6) A licensee or certificate holder has a right, pursuant to the Uniform Licensing Act, to request a hearing should a claim be made against the license or certificate based solely on the disqualifying criminal conviction as enumerated in Subparagraphs (a), (b) and (c) of Paragraph (4) above.

(7) Should the construction industries commission suspend or revoke a license or certificate, based solely upon a disqualifying criminal conviction, the licensee or certificate holder has the right to appeal to the district court pursuant to the rules of civil procedure to determine whether the revocation or suspensions is properly based upon a disqualifying criminal conviction.

(8) Nothing herein prevents the construction industries commission from disciplining a licensee or certificate holder on the basis of a licensee's or individual's conduct to the extent that such conduct violated the Construction Industries Licensing Act or the Liquefied Petroleum and Compressed Natural Gas Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the licensee or individual was convicted is listed as one of the disqualifying criminal convictions listed in Paragraph (4) above.

[14.5.8.8 NMAC - N, 12/13/2014; A, 3/10/2022]

14.5.8.9 ADMINISTRATIVE INVESTIGATIONS AND ENFORCEMENT:

A. Complaints: Administrative disciplinary proceedings may be initiated by the filing of a complaint by any person, including members of the commission or division staff, against any licensee, registrant or certified holder. The division will assign an employee to investigate the alleged violations.

B. Notice of investigations (NOI): A NOI shall be sent to the address on record according to the licensee's file. The licensee is required to respond within 15 calendar days from the date the NOI was sent by the division and provide the information or documents requested by the commission or division. Failure to respond in writing and supply information or documentation requested may subject the licensee to disciplinary actions.

C. Investigative subpoenas: The division director or the commission is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations. The recipient of an investigative subpoena is obligated to reply with the requested information no later than 30 calendar days after receipt of the subpoena unless otherwise specified in the subpoena. Failure to comply with the subpoena may subject a licensee or certificate holder to disciplinary action or be cause for the division or the commission to seek enforcement of the subpoena in a court of law.

[14.5.8.9 NMAC - N, 12/13/2014; A, 3/10/2022]

14.5.8.10 INFORMAL HEARING:

A. Requesting an informal hearing: Pursuant to the CILA, complaints may be resolved at the request of the complainant, the licensee or the commission through an informal hearing. Although a complainant is not a party to the matter, the complainant may request an informal hearing.

B. Acceptance of an informal hearing:

(1) The commission and licensee must agree to the hearing.

(2) The commission and licensee must agree that the decision of the hearing officer is final and not subject to review by the commission or a court of law.

(3) Written acceptance must be received by the division within 30 calendar days of approval of the informal hearing by the commission. Failure to provide written acceptance will result in the issuance of a NCA against the licensee or the qualifying party.

C. Notice:

(1) Upon receipt of a written acceptance of the informal hearing, the division shall issue a notice of informal hearing.

(2) The informal hearing will be set within 15 and 90 calendar days of the receipt of the written acceptance.

D. Venue: The informal hearing will be held at the department office in Albuquerque or Santa Fe. The licensee may request to appear telephonically or to have the informal hearing in the county in which the licensee resides by submitting such a request in writing within 15 calendar days of receipt of the notice of hearing.

E. Informal hearing procedures:

(1) The commission shall designate a hearing officer to preside over the informal hearing.

(2) The division employee presenting the case may also be the investigator assigned to the complaint and shall be allowed to testify.

(3) The hearing officer will rule on the admissibility of all evidence and testimony and those rulings shall be final and not subject to review.

(4) The hearing officer may ask questions of either party or the witnesses at any time during the hearing.

(5) The hearing officer may request a recess at any time during the proceedings to discuss the possibility of resolving the matter by agreement. The hearing officer will attempt to facilitate a binding resolution that is acceptable to both parties, however, if an agreement cannot be reached, the hearing officer's decision will be final and not subject to the commission's review or judicial review.

F. Final Decisions: The hearing officer will announce the terms of the agreement or the hearing officer's final decision orally at the conclusion of the informal hearing. A written decision that includes all terms to be fulfilled as stated at the conclusion of the hearing shall be sent to the licensee and the division within 30 days. At the next regularly scheduled commission meeting, the division staff shall inform the commission of the final decisions for each informal hearing. The written decision shall state that the terms of the agreement or the hearing officer's final decision is final and not subject to the commission's review or judicial review pursuant to Subsection C of Section 60-13-27 NMSA 1978.

G. Disciplinary Authority: A hearing officer may, in the hearing officer's discretion, assess any discipline, administrative penalty or combination thereof allowed under the ULA, CILA or rules promulgated under the CILA.

[14.5.8.10 NMAC - N, 12/13/2014]

14.5.8.11 FORMAL HEARING: Every licensee, certificate holder or applicant shall be afforded notice and the opportunity to be heard in accordance with the ULA before the commission may take any adverse action against the licensee, applicant, or certificate holder, or before an application may be denied.

[14.5.8.11NMAC - N, 12/13/2014]

14.5.8.12 UNLICENSED ACTIVITY: If the division does not criminally prosecute an individual suspected of unlicensed activity under Section 60-13-52 NMSA 1978, the commission may take administrative action under the ULA and seek an administrative penalty in the amount of \$1,000.00 per violation.

[14.5.8.12 NMAC - N, 12/13/2014]

HISTORY of 14.5.8 NMAC: [RESERVED]