

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 12 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE; SANCTION, PLAN OF CORRECTION, AND CIVIL MONETARY PENALTY

16.8.12.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.12.1 NMAC - N, 07/12/2022]

16.8.12.2 SCOPE: This rule applies to all licensees and applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

[16.8.12.2 NMAC - N, 07/12/2022]

16.8.12.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.12.3 NMAC - N, 07/12/2022]

16.8.12.4 DURATION: Permanent.

[16.8.12.4 NMAC - N, 07/12/2022]

16.8.12.5 EFFECTIVE DATE: July 12, 2022, unless an earlier date is cited at the end of a section.

[16.8.12.5 NMAC - N, 07/12/2022]

16.8.12.6 OBJECTIVE: The objective of Part 12 is to promote, preserve, and protect the public health and safety by regulating the safe production, testing, wholesale, and consumption of commercial and medical cannabis, as well as the authority to take action against a licensee or applicant for licensure, and to set forth the procedures for filing a complaint against cannabis establishment licensees.

[16.8.12.6 NMAC - N, 07/12/2022]

16.8.12.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

[16.8.12.7 NMAC - N, 07/12/2022]

16.8.12.8 GENERAL PROVISIONS:

- A.** A complaint may be initiated in writing by any person.
- B.** Complaints must be legible, either printed in black ink or typed.
- C.** Complaints must contain factual allegations, constituting the alleged violations of any provisions

of the Cannabis Regulation Act or division rules.

[16.8.12.8 NMAC - N, 07/12/2022]

16.8.12.9 COMPLAINT PROCEDURES: A complaint may be initiated by any person in writing and delivered via the division website, mail, or by visiting the division office. Only complaints written on the official complaint form will be formally addressed by the division. The forms required for an official complaint can be obtained from the division office, located at 2550 Cerrillos Road, Santa Fe, NM, 87505, or the division website.

[16.8.12.9 NMAC - N, 07/12/2022]

16.8.12.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The division 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(s) and respondent(s).

B. Upon receipt of a complaint, the division will:

- (1)** log in the date the complaint was received;
- (2)** determine whether the respondent is licensed or an applicant for licensure with the division;

(3) assign a complaint number and create an individual file;

(4) send the complainant a written acknowledgment of receipt of the complaint; and

(5) at the division's discretion, investigate the allegations contained in the complaint to determine their veracity and whether the circumstances warrant any action by the division or referral to law enforcement.

[16.8.12.10 NMAC - N, 07/12/2022]

16.8.12.11 DIVISION ACTION:

- A.** The division may:
- (1) assess a civil monetary penalty that shall not exceed ten thousand dollars (\$10,000) per violation; or
 - (2) suspend or revoke the license.
- B.** If the division determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.
- C.** The division shall send a letter of the division's decision to both the complainant and respondent stating the division's actions and the reasons for its decision.
- D.** If the division determines that there is sufficient evidence or cause to proceed with disciplinary action against the licensee, the division shall issue a notice of contemplated action and initiate disciplinary proceedings.

[16.8.12.11 NMAC - N, 07/12/2022]

16.8.12.12 PROCEEDINGS AGAINST APPLICANT OR LICENSEE:

- A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.
- B.** Licensees who have been found culpable and sanctioned by the division shall be responsible for the payments of all costs of the disciplinary proceedings.

[16.8.12.12 NMAC - N, 07/12/2022]

16.8.12.13 SCHEDULE OF CIVIL MONETARY PENALTIES:

- A.** Subject to subsection B of this section, the division shall impose penalties as follows:
- (1) For the first offense within a 12-month period, a civil monetary penalty ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.
 - (2) For the second offense within a 12-month period, a civil monetary penalty ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.
 - (3) For three or more offenses within a 12-month period, a civil monetary penalty of ten thousand dollars (\$10,000) and revocation of the license.
 - (4) For any offense involving sale or distribution of cannabis to minors, a fine of ten thousand dollars (\$10,000) and revocation of the license.
- B.** Any portion of the civil monetary penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case. When determining whether penalties should be enhanced or suspended, the division shall consider:
- (1) the nature of the violation;
 - (2) the licensee's level of cooperation with the division in investigating the violation;
 - (3) the violation's threat or potential threat to public health, safety, and welfare;
 - (4) the licensee's willingness to address and remediate the violation; and
 - (5) any other fact or circumstance that the division finds relevant.

[16.8.12.13 NMAC - N, 07/12/2022]

16.8.12.14 SETTLEMENT AGREEMENT:

- A.** Whenever probable cause exists that a licensee has violated a provision of the Cannabis Regulation Act, division rules, or any applicable state or federal law, and a monetary penalty or other disciplinary action may be issued to the licensee for such violation, an informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interests of the state or public health and safety.
- B.** Final disciplinary action decisions will be mailed to the licensee.
- C.** A copy of the final decision shall be filed in the division and posted on the division website.

D. The civil monetary penalty imposed shall not exceed those which could be imposed after hearing.
[16.8.12.14 NMAC - N, 07/12/2022]

16.8.12.15 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.
[16.8.12.15 NMAC - N, 07/12/2022]

History of 16.8.12 NMAC: [RESERVED]