

State of New Mexico, Administrative Hearings Office
Explanation of the Hearing Process (Implied Consent Act)

Hearing Process

The purpose of the hearing you have requested is to determine if the proposed revocation of your driver's license or driving privileges by the Motor Vehicle Division is proper and in accordance with the provisions of the Implied Consent Act of New Mexico (66-8-105 to 66-8-112, NMSA 1978). The hearing process will be conducted pursuant to Regulation 22.600.6 NMAC, which can be found online at <http://www.aho.state.nm.us/HearingsConducted/ICAHearings>. Other hearing process information, including relevant forms and a copy of the statute, may also be located at that web address. The administrative hearing is limited to a consideration of the issues indicated on the hearing notice and those listed in Section 66-8-112 (E), NMSA 1978.

Distinction Between Criminal and Administrative Hearing

This hearing is not related to the court hearing on the criminal charge of DWI. Questions about your criminal case should be directed to the clerk of the court hearing your case or your attorney. All questions about this administrative hearing should be directed to the Administrative Hearings Office Scheduling Unit at (505) 827-0358. A CONTINUANCE OF YOUR CRIMINAL CASE OR DISMISSAL OF THE CRIMINAL CHARGES HAS NO EFFECT ON THE ADMINISTRATIVE HEARING. However, if as a result of a criminal conviction, you no longer wish to contest the proposed revocation of your driving privileges, you may submit a written request to withdraw your Implied Consent Act hearing request. By submitting a withdrawal of your hearing request, the scheduled hearing date will be cancelled and the revocation of your driving privileges will be sustained without a hearing.

Conduct of the Hearing

Your hearing will be heard by a Hearing Officer, who is an attorney and Administrative Law Judge with the Administrative Hearings Office ("AHO"). AHO is an agency independent of the Motor Vehicle Division. YOU MUST APPEAR AT THE HEARING AT THE SCHEDULED TIME. The Hearing Officer will wait only ten (10) minutes beyond the scheduled hearing time for you to appear. If the Hearing Officer is not present at the hearing location or if you are having difficulty accessing/entering the hearing location, you must call the Administrative Hearings Office Scheduling Unit at (505) 827-0358 to obtain further instructions. Do not leave the hearing location until you have spoken to the Hearing Officer or receive permission from the Administrative Hearings Office Scheduling Unit. If you do not appear, your license will be revoked. Because the hearing is informal, the technical rules of evidence do not apply. However, all testimony must be given under oath. If subpoenaed to the hearing, the Motor Vehicle Division will first present its witness, the police officer. After the police officer testifies, you will be given the opportunity to ask any relevant questions, testify and present any relevant documents or other witnesses. Please have all the evidence, exhibits and any witnesses you intend to present ready at the time of the scheduled hearing. The record will not be left open beyond the day of the hearing, unless so ordered by the Hearing Officer.

You may be represented by an attorney at your own expense. It is the driver's sole responsibility to secure an attorney by the time of the hearing. If you are unable to appear at the hearing, you may have an attorney appear on your behalf in order to avoid losing your right to a hearing. Given the strict jurisdictional deadlines for conduct of the hearing, the absence of an attorney is not a basis for a continuance. The Hearing Officer's written decision (Decision and Order) will be mailed to you and will explain your appeal rights.

Continuances

A request for a continuance may be submitted in writing if you have good cause and if it is received by the Administrative Hearings Office Scheduling Unit at least three (3) working days prior to the day the

hearing is scheduled, absent extraordinary circumstances which the requesting party could not have known earlier. No continuance will be granted beyond ninety (90) days after the Notice of Revocation. Send any continuance request to the Administrative Hearings Office Scheduling Unit by email to Scheduling.Unit@aho.nm.gov or mail to P.O. Box 6400, Santa Fe, New Mexico 87502. Continuance templates and other forms are available on AHO's website, www.aho.state.nm.us/HearingsConducted/ICAHearings.

Discovery

All requests for documents, including DVDs or videos pertaining to your arrest must be mailed to: Taxation and Revenue Division, Legal Services Bureau, Attn: DWI Legal, P.O. Box 630, Santa Fe, New Mexico 87504-0630. You may fax request to (505) 827-0684. If the Legal Services Bureau receives a request, it can provide copies of documents within the files of the Motor Vehicle Division and can issue a discovery order for documents that are in the custody of the police agency. If the police agency does not make the documents you request available in a timely manner, you must notify the Legal Services Bureau in writing pursuant to Regulation 22.600.6.12 (B) NMAC.

Witnesses

Requests to subpoena witnesses must be made in writing no later than ten (10) days before the hearing. Requests should be submitted by email to Scheduling.Unit@aho.nm.gov or by mail to the Administrative Hearings Office, P.O. Box 6400, Santa Fe, New Mexico 87502. Attorneys must prepare a proposed subpoena using the form subpoena provided to them by the Scheduling Unit. The party requesting the subpoenas is responsible for associated costs and actual serving of the subpoenas. Please make sure that all your witnesses are available at the time of the hearing.

Conduct of Telephonic and Videoconference Hearings

If the hearing is scheduled as a videoconference or telephonic hearing, you have 10-days to file an objection. Inaction within 10-days will be deemed as consent to proceed with a telephonic or videoconference hearing. Under Regulation 22.600.6.10 (D) NMAC, if you have not already demanded an in-person hearing, at least three days before the scheduled hearing you may request to appear via telephone or videoconference from a location convenient to you. By requesting such a remote appearance, you waive the in-person hearing requirement and you have consented to all parties, witnesses, and the Hearing Officer appearing telephonically or through videoconference at the hearing. Failure to call in for a telephonic or appear for a videoconference hearing using the instructions contained in the notice of hearing by 10-minutes after the start of the hearing will be treated as non-appearance. If you wish to submit any documents or exhibits for the hearing, please email them to Scheduling.Unit@aho.nm.gov at least one day prior to the hearing, mail them at least seven-days ahead of time to P.O. Box 6400, Santa Fe, NM 87502, or provide them as otherwise ordered by the Hearing Officer at the time of the hearing.

If you do not speak or understand English, the Administrative Hearings Office provides a telephonic interpreter. If you prefer, you may bring your own interpreter to translate for you to the hearing. This person does not have to be a court certified interpreter. ***Si usted no habla ni entiende ingles, la Oficina de Audiencias Administrativas proporciona un intérprete telefónico. Si lo prefiere, puede su propio intérprete para que le traduzca. Esta person no tiene que ser un intérprete certificado por la corte*.**