

Effective 5/10/2016

61-2-203 Adjudicative proceedings -- Citation authority.

- (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under a chapter the division administers.
- (2) The division may initiate an adjudicative proceeding through:
 - (a) a citation, pursuant to Subsection (3);
 - (b) a notice of agency action; or
 - (c) a notice of formal or informal proceeding.
- (3) In addition to any other statutory penalty for a violation related to an occupation or profession regulated under this title, the division may issue a citation to a person who, upon inspection or investigation, the division concludes to have violated:
 - (a) Subsection 61-2c-201(1), which requires licensure;
 - (b) Subsection 61-2c-201(4), which requires entity licensure;
 - (c) Subsection 61-2c-205(3), which requires notification of a change in specified information regarding a licensee;
 - (d) Subsection 61-2c-205(4), which requires notification of specified legal actions;
 - (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division within the required time period;
 - (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the division;
 - (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
 - (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading advertising;
 - (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed work if unlicensed;
 - (j) Subsection 61-2e-201(1), which requires registration;
 - (k) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
 - (l) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
 - (m) Subsection 61-2e-401(1)(b), which prohibits failure to respond to a request by the division;
 - (n) Subsection 61-2f-201(1), which requires licensure;
 - (o) Subsection 61-2f-206(1), which requires entity registration;
 - (p) Subsection 61-2f-301(1), which requires notification of a specified legal action;
 - (q) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
 - (r) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated with a principal broker;
 - (s) Subsection 61-2f-401(9), which prohibits failing to keep specified records for inspection by the division;
 - (t) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive advertising;
 - (u) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;
 - (v) Subsection 61-2g-301(1), which requires licensure;
 - (w) Subsection 61-2g-405(3), which requires making records required to be maintained available to the division;
 - (x) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;
 - (y) a rule made pursuant to any Subsection listed in this Subsection (3);
 - (z) an order of the division; or
 - (aa) an order of the commission or board that oversees the person's profession.
- (4)
 - (a) In accordance with Subsection (9), the division may assess a fine against a person for a violation of a provision listed in Subsection (3), as evidenced by:
 - (i) an uncontested citation;

- (ii) a stipulated settlement; or
- (iii) a finding of a violation in an adjudicative proceeding.
- (b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection (3).
- (5) Except as provided in Subsection (7)(d), the division may not use a citation to effect a license:
 - (a) denial;
 - (b) probation;
 - (c) suspension; or
 - (d) revocation.
- (6)
 - (a) A citation issued by the division shall:
 - (i) be in writing;
 - (ii) describe with particularity the nature of the violation, including a reference to the provision of the statute, rule, or order alleged to have been violated;
 - (iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
 - (iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time period specified in the citation.
 - (b) The division may issue a notice in lieu of a citation.
- (7)
 - (a) A citation becomes final:
 - (i) if within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation; or
 - (ii) if the director or the director's designee conducts a hearing pursuant to a timely request for a hearing and issues an order finding that a violation has occurred.
 - (b) The 20-day period to contest a citation may be extended by the division for cause.
 - (c) A citation that becomes the final order of the division due to a person's failure to timely request a hearing is not subject to further agency review.
 - (d)
 - (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.
 - (ii) The failure of a license applicant to comply with a citation after the citation becomes final is a ground for denial of the license application.
- (8)
 - (a) The division may not issue a citation under this section after the expiration of six months following the occurrence of a violation.
 - (b) The division may issue a notice to address a violation that is outside of the six-month citation period.
- (9) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:
 - (a) for a first offense, \$1,000;
 - (b) for a second offense, \$2,000; and
 - (c) for each offense subsequent to a second offense, \$2,000 for each day of continued offense.
- (10)
 - (a) An action for a first or second offense for which the division has not issued final order does not preclude the division from initiating a subsequent action for a second or subsequent offense while the preceding action is pending.

- (b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
- (11)
- (a) If a person does not pay a penalty, the director may collect the unpaid penalty by:
 - (i) referring the matter to a collection agency; or
 - (ii) bringing an action in the district court of the county:
 - (A) where the person resides; or
 - (B) where the office of the director is located.
 - (b) A county attorney or the attorney general of the state shall provide legal services to the director in an action to collect the penalty.
 - (c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section.

Amended by Chapter 384, 2016 General Session