Disciplinary Authority

12-20-404. [Formerly 12-5.5-302] Disciplinary actions - regulator powers - disposition of fines. (1) General disciplinary authority. If the director determines that an applicant, or licensee, CERTIFICATE HOLDER, OR REGISTRANT has committed any of the acts specified in part 4 of this article, the director, or an act or engaged in conduct that constitutes grounds for discipline or unprofessional conduct under a part or article of this title 12 governing the particular profession or occupation, the regulator may:

(a) Issue a letter of admonition in accordance with subsection (4) of this section;

(b) (I) Place a licensee, CERTIFICATE HOLDER, OR REGISTRANT on probation, except as provided in subsection (1)(b)(II) of this section.

(II) A regulator is not authorized under this subsection (1)(b) to impose probation on a licensee, CERTIFICATE HOLDER, OR REGISTRANT regulated under the following:

(A) Article 205 of this title 12 concerning athletic trainers;

(B) Article 215 of this title 12 concerning chiropractors;

(C) Article 260 of this title 12 concerning nurse aides; or

(D) Article 310 of this title 12 concerning surgical assistants and surgical technologists.

(c) (I) Impose an administrative fine, not to exceed two thousand five hundred dollars for each separate offense, or subject to any limitations or requirements specified in the laws governing a particular profession or occupation and except as provided in subsection (1)(c)(II) of this section.

(II) A regulator is not authorized under this subsection (1)(c) to impose a fine on a licensee, CERTIFICATE HOLDER, OR REGISTRANT regulated under the following:

(A) Article 125 of this title 12 concerning fantasy contests;

(B) Article 140 of this title 12 concerning nontransplant tissue banks;

(C) Article 200 of this title 12 concerning acupuncturists;

(D) Article 205 of this title 12 concerning athletic trainers;

(E) Article 260 of this title 12 concerning nurse aides;

(F) Article 265 of this title 12 concerning nursing home administrators;

(G) Article 270 of this title 12 concerning occupational therapists and occupational therapy assistants;

(H) Article 300 of this title 12 concerning respiratory therapists; or

(I) Article 310 of this title 12 concerning surgical assistants and surgical
TECHNOLOGISTS.

(d) (I) Deny, refuse to renew, revoke, or suspend the license, CERTIFICATION, OR REGISTRATION of an applicant, or licensee, CERTIFICATE HOLDER, OR REGISTRANT, EXCEPT AS PROVIDED IN SUBSECTION (1)(d)(II) OF THIS SECTION.

(II) A REGULATOR IS NOT AUTHORIZED UNDER THIS SUBSECTION (1)(d) TO REFUSE TO RENEW THE LICENSE, CERTIFICATION, OR REGISTRATION OF A LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT REGULATED UNDER THE FOLLOWING:

(A) Article 105 OF THIS TITLE CONCERNING BARBERS AND COSMETOLOGISTS;
(B) Article 110 OF THIS TITLE CONCERNING COMBATIVE SPORTS;
(C) Article 125 OF THIS TITLE CONCERNING FANTASY CONTESTS;
(D) Article 140 OF THIS TITLE CONCERNING NONTRANSPLANT TISSUE BANKS;
(E) Article 145 OF THIS TITLE CONCERNING OUTFITTERS AND GUIDES;
(F) Article 160 OF THIS TITLE CONCERNING PRIVATE INVESTIGATORS;
(G) Article 200 OF THIS TITLE CONCERNING ACUPUNCTURISTS;
(H) Article 225 OF THIS TITLE CONCERNING DIRECT-ENTRY MIDWIVES;
(I) Article 240 OF THIS TITLE CONCERNING MEDICAL PRACTICE;
(J) Article 250 OF THIS TITLE CONCERNING NATUROPATHIC DOCTORS;
(K) Article 260 OF THIS TITLE CONCERNING NURSE AIDES;
(L) Article 305 OF THIS TITLE CONCERNING SPEECH-LANGUAGE PATHOLOGISTS;

OR

(M) Article 315 OF THIS TITLE CONCERNING VETERINARIANS.

2 (2) Deferral precluded. (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(b) THIS SUBSECTION (2) DOES NOT APPLY TO THE FOLLOWING:

(I) Article 125 OF THIS TITLE CONCERNING FANTASY CONTESTS;
(II) Article 140 OF THIS TITLE CONCERNING NONTRANSPLANT TISSUE BANKS;
(III) Article 150 OF THIS TITLE CONCERNING PASSENGER TRAMWAYS; AND
(IV) Article 260 OF THIS TITLE CONCERNING NURSE AIDES.

3 (3) Waiting period after revocation or surrender. (a) (I) Except as provided in subsections (3)(a)(III) and (3)(b) of this section, a person whose license, CERTIFICATION, OR REGISTRATION to practice as a hearing aid provider or apprentice PROFESSION OR OCCUPATION under this article TITLE 12 is revoked or who surrenders his or her license to avoid discipline, is ineligible to apply for any new license, CERTIFICATION, OR REGISTRATION under this article THE PARTICULAR PROFESSION OR OCCUPATION for two years after the date of revocation or surrender of his or her license, CERTIFICATION, OR REGISTRATION.

(II) THE WAITING PERIOD SPECIFIED IN SUBSECTION (3)(a)(I) OF THIS SECTION APPLIES WHEN A PERSON REGULATED UNDER ANY OF THE FOLLOWING ARTICLES SURRENDERS A
LICENSE, CERTIFICATION, OR REGISTRATION TO AVOID DISCIPLINE:

(A) Article 105 of this title 12 concerning barbers and cosmetologists;
(B) Article 145 of this title 12 concerning outfitters and guides;
(C) Article 160 of this title 12 concerning private investigators;
(D) Article 200 of this title 12 concerning acupuncturists;
(E) Article 210 of this title 12 concerning audiologists;
(F) Article 230 of this title 12 concerning hearing aid providers;
(G) Article 235 of this title 12 concerning massage therapists;
(H) Article 240 of this title 12 concerning medical practice;
(I) Article 250 of this title 12 concerning naturopathic doctors;
(J) Article 255 of this title 12 concerning nurses;
(K) Article 270 of this title 12 concerning occupational therapists and
occupational therapy assistants;
(L) Article 285 of this title 12 concerning physical therapists and physical
therapist assistants;
(M) Article 300 of this title 12 concerning respiratory therapists; and
(N) Article 305 of this title 12 concerning speech-language pathologists.

(III) (A) For a person whose license as a nursing home administrator issued
under article 265 of this title 12 is revoked, or who surrenders the license to
avoid discipline, the person is ineligible to apply for a new nursing home
administrator license under that article for one year after the date of
revocation or surrender.

(B) For a person whose license, certification, or registration as a mental
health professional issued under article 245 of this title 12 is revoked, or who
surrenders the license, certification, or registration to avoid discipline, the
person is ineligible to apply for a new license, certification, or registration
under that article for three years after the date of revocation or surrender.

(b) This subsection (3) does not apply to the following:
(I) Article 110 of this title 12 concerning combative sports;
(II) Article 125 of this title 12 concerning fantasy contests;
(III) Article 140 of this title 12 concerning nontransplant tissue banks;
(IV) Article 150 of this title 12 concerning passenger tramways;
(V) Article 205 of this title 12 concerning athletic trainers;
(VI) Article 215 of this title 12 concerning chiropractors;
(VII) Article 260 of this title 12 concerning nurse aides;
(VIII) Article 295 of this title 12 concerning psychiatric technicians; and
(IX) Article 310 of this title 12 concerning surgical assistants and
surgical technologists.

(4) Letter of admonition. (a) When a complaint or investigation discloses an
instance of misconduct that, in the opinion of the director, does not warrant
formal action by the director but that should not be dismissed as being without merit, the director may issue and send a letter of admonition to the licensee, certificate holder, or registrant.

(b) (I) When the director sends a letter of admonition to a licensee, certificate holder, or registrant pursuant to paragraph (a) of this subsection (4), the director shall also advise the licensee, certificate holder, or registrant that he or she has the right to request in writing, within twenty days after receipt of the letter, that the director initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(II) If the licensee, makes the request for timely requests adjudication, the director shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(c) This subsection (4) does not apply to the following:

(I) Article 205 of this title 12 concerning athletic trainers; and

(II) Article 310 of this title 12 concerning surgical assistants and surgical technologists.

(5) Confidential letter of concern. (a) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, should be dismissed, but the director has noticed indications of possible errant conduct by the licensee, certificate holder, or registrant that could lead to serious consequences if not corrected, the director may send the licensee, certificate holder, or registrant a confidential letter of concern.

(b) This subsection (5) does not apply to the following:

(I) Article 125 of this title 12 concerning fantasy contests;

(II) Article 140 of this title 12 concerning nontransplant tissue banks;

(III) Article 150 of this title 12 concerning passenger trams;

(IV) Article 205 of this title 12 concerning athletic trainers; and

(V) Article 310 of this title 12 concerning surgical assistants and surgical technologists.

(6) The director shall not enforce any provisions of this article or rules promulgated pursuant to this article that are held unconstitutional, invalid, or inconsistent with federal laws or regulations, including rules promulgated by the United States food and drug administration:

(7) Disposition of fines. (a) Except as specified in subsection (6)(b) of this section, a regulator shall transmit all fines collected pursuant to this section shall be transmitted a part or article of this title 12 to the state treasurer, who shall credit them to the general fund.

(b) The disposition of fines collected by:
(I) The state electrical board is governed by section 12-115-118 (7)(a);

(II) the director for violations of laws governing the activities of outfitters and guides is governed by section 12-145-107 (5); and

(III) the state plumbing board is governed by section 12-160-116.5 (4)(a).