

**FINAL PROPOSAL**  
**Disciplinary Authority**

1           **12-20-404. [Formerly 12-5.5-302] Disciplinary actions - regulator powers -**  
2 **disposition of fines.** (1) **General disciplinary authority.** If ~~the director~~ A REGULATOR  
3 determines that an applicant, ~~or~~ licensee, CERTIFICATE HOLDER, OR REGISTRANT has  
4 committed ~~any of the acts specified in part 4 of this article, the director~~ AN ACT OR ENGAGED  
5 IN CONDUCT THAT CONSTITUTES GROUNDS FOR DISCIPLINE OR UNPROFESSIONAL CONDUCT  
6 UNDER A PART OR ARTICLE OF THIS TITLE 12 GOVERNING THE PARTICULAR PROFESSION OR  
7 OCCUPATION, THE REGULATOR may:

8           (a) Issue a letter of admonition IN ACCORDANCE WITH SUBSECTION (4) OF THIS  
9 SECTION;

10           (b) (I) Place a licensee, CERTIFICATE HOLDER, OR REGISTRANT on probation, EXCEPT  
11 AS PROVIDED IN SUBSECTION (1)(b)(II) OF THIS SECTION.

12           (II) A REGULATOR IS NOT AUTHORIZED UNDER THIS SUBSECTION (1)(b) TO IMPOSE  
13 PROBATION ON A LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT REGULATED UNDER THE  
14 FOLLOWING:

15           (A) ARTICLE **205** OF THIS TITLE 12 CONCERNING ATHLETIC TRAINERS;

16           (B) ARTICLE **215** OF THIS TITLE 12 CONCERNING CHIROPRACTORS;

17           (C) ARTICLE **260** OF THIS TITLE 12 CONCERNING NURSE AIDES; OR

18           (D) ARTICLE **310** OF THIS TITLE 12 CONCERNING SURGICAL ASSISTANTS AND  
19 SURGICAL TECHNOLOGISTS.

20           (c) (I) Impose an administrative fine, ~~not to exceed two thousand five hundred~~  
21 ~~dollars for each separate offense; or~~ SUBJECT TO ANY LIMITATIONS OR REQUIREMENTS  
22 SPECIFIED IN THE LAWS GOVERNING A PARTICULAR PROFESSION OR OCCUPATION AND EXCEPT  
23 AS PROVIDED IN SUBSECTION (1)(c)(II) OF THIS SECTION.

24           (II) A REGULATOR IS NOT AUTHORIZED UNDER THIS SUBSECTION (1)(c) TO IMPOSE A  
25 FINE ON A LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT REGULATED UNDER THE  
26 FOLLOWING:

27           (A) ARTICLE 125 OF THIS TITLE 12 CONCERNING FANTASY CONTESTS;

28           (B) ARTICLE 140 OF THIS TITLE 12 CONCERNING NONTRANSPLANT TISSUE BANKS;

29           (C) ARTICLE 200 OF THIS TITLE 12 CONCERNING ACUPUNCTURISTS;

30           (D) ARTICLE 205 OF THIS TITLE 12 CONCERNING ATHLETIC TRAINERS;

31           (E) ARTICLE 260 OF THIS TITLE 12 CONCERNING NURSE AIDES;

32           (F) ARTICLE 265 OF THIS TITLE 12 CONCERNING NURSING HOME ADMINISTRATORS;

33           (G) ARTICLE 270 OF THIS TITLE 12 CONCERNING OCCUPATIONAL THERAPISTS AND  
34 OCCUPATIONAL THERAPY ASSISTANTS;

35           (H) ARTICLE 300 OF THIS TITLE 12 CONCERNING RESPIRATORY THERAPISTS; OR

36           (I) ARTICLE 310 OF THIS TITLE 12 CONCERNING SURGICAL ASSISTANTS AND SURGICAL

1 TECHNOLOGISTS.

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

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

- 8 (A) ARTICLE 105 OF THIS TITLE 12 CONCERNING BARBERS AND COSMETOLOGISTS;  
9 (B) ARTICLE 110 OF THIS TITLE 12 CONCERNING COMBATIVE SPORTS;  
10 (C) ARTICLE 125 OF THIS TITLE 12 CONCERNING FANTASY CONTESTS;  
11 (D) ARTICLE 140 OF THIS TITLE 12 NONTRANSPLANT TISSUE BANKS;  
12 (E) ARTICLE 145 OF THIS TITLE 12 CONCERNING OUTFITTERS AND GUIDES;  
13 (F) ARTICLE 160 OF THIS TITLE 12 CONCERNING PRIVATE INVESTIGATORS;  
14 (G) ARTICLE 200 OF THIS TITLE 12 CONCERNING ACUPUNCTURISTS;  
15 (H) ARTICLE 225 OF THIS TITLE 12 CONCERNING DIRECT-ENTRY MIDWIVES;  
16 (I) ARTICLE 240 OF THIS TITLE 12 CONCERNING MEDICAL PRACTICE;  
17 (J) ARTICLE 250 OF THIS TITLE 12 CONCERNING NATUROPATHIC DOCTORS;  
18 (K) ARTICLE 260 OF THIS TITLE 12 CONCERNING NURSE AIDES;  
19 (L) ARTICLE 305 OF THIS TITLE 12 CONCERNING SPEECH-LANGUAGE PATHOLOGISTS;

20 OR

21 (M) ARTICLE 315 OF THIS TITLE 12 CONCERNING VETERINARIANS.

22 (2) **Deferral precluded.** (a) When a complaint or investigation discloses an instance  
23 of misconduct that, in the opinion of ~~the director~~ A REGULATOR, warrants formal action, the  
24 ~~complaint~~ REGULATOR shall not ~~be resolved~~ RESOLVE THE COMPLAINT by a deferred  
25 settlement, action, judgment, or prosecution.

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

- 27 (I) ARTICLE 125 OF THIS TITLE 12 CONCERNING FANTASY CONTESTS;  
28 (II) ARTICLE 140 OF THIS TITLE 12 CONCERNING NONTRANSPLANT TISSUE BANKS;  
29 (III) ARTICLE 150 OF THIS TITLE 12 CONCERNING PASSENGER TRAMWAYS; AND  
30 (IV) ARTICLE 260 OF THIS TITLE 12 CONCERNING NURSE AIDES.

31 (3) **Waiting period after revocation or surrender.** (a) (I) EXCEPT AS PROVIDED IN  
32 SUBSECTIONS (3)(a)(III) AND (3)(b) OF THIS SECTION, a person whose license,  
33 CERTIFICATION, OR REGISTRATION to practice ~~as a hearing aid provider or apprentice~~ A  
34 PROFESSION OR OCCUPATION under this ~~article~~ TITLE 12 is revoked ~~or who surrenders his or~~  
35 ~~her license to avoid discipline~~; is ineligible to apply for any A new license, CERTIFICATION,  
36 OR REGISTRATION under ~~this article~~ THE PART OR ARTICLE OF THIS TITLE 12 THAT GOVERNS  
37 THE PARTICULAR PROFESSION OR OCCUPATION for two years after the date of revocation or  
38 surrender of his or her license, CERTIFICATION, OR REGISTRATION.

39 (II) THE WAITING PERIOD SPECIFIED IN SUBSECTION (3)(a)(I) OF THIS SECTION APPLIES  
40 WHEN A PERSON REGULATED UNDER ANY OF THE FOLLOWING ARTICLES SURRENDERS A

1 LICENSE, CERTIFICATION, OR REGISTRATION TO AVOID DISCIPLINE:

2 (A) ARTICLE 105 OF THIS TITLE 12 CONCERNING BARBERS AND COSMETOLOGISTS;

3 (B) ARTICLE 145 OF THIS TITLE 12 CONCERNING OUTFITTERS AND GUIDES;

4 (C) ARTICLE 160 OF THIS TITLE 12 CONCERNING PRIVATE INVESTIGATORS;

5 (D) ARTICLE 200 OF THIS TITLE 12 CONCERNING ACUPUNCTURISTS;

6 (E) ARTICLE 210 OF THIS TITLE 12 CONCERNING AUDIOLOGISTS;

7 (F) ARTICLE 230 OF THIS TITLE 12 CONCERNING HEARING AID PROVIDERS;

8 (G) ARTICLE 235 OF THIS TITLE 12 CONCERNING MASSAGE THERAPISTS;

9 (H) ARTICLE 240 OF THIS TITLE 12 CONCERNING MEDICAL PRACTICE;

10 (I) ARTICLE 250 OF THIS TITLE 12 CONCERNING NATUROPATHIC DOCTORS;

11 (J) ARTICLE 255 OF THIS TITLE 12 CONCERNING NURSES;

12 (K) ARTICLE 270 OF THIS TITLE 12 CONCERNING OCCUPATIONAL THERAPISTS AND  
13 OCCUPATIONAL THERAPY ASSISTANTS;

14 (L) ARTICLE 285 OF THIS TITLE 12 CONCERNING PHYSICAL THERAPISTS AND PHYSICAL  
15 THERAPIST ASSISTANTS;

16 (M) ARTICLE 300 OF THIS TITLE 12 CONCERNING RESPIRATORY THERAPISTS; AND

17 (N) ARTICLE 305 OF THIS TITLE 12 CONCERNING SPEECH-LANGUAGE PATHOLOGISTS.

18 (III) (A) FOR A PERSON WHOSE LICENSE AS A NURSING HOME ADMINISTRATOR ISSUED  
19 UNDER ARTICLE 265 OF THIS TITLE 12 IS REVOKED, OR WHO SURRENDERS THE LICENSE TO  
20 AVOID DISCIPLINE, THE PERSON IS INELIGIBLE TO APPLY FOR A NEW NURSING HOME  
21 ADMINISTRATOR LICENSE UNDER THAT ARTICLE FOR ONE YEAR AFTER THE DATE OF  
22 REVOCATION OR SURRENDER.

23 (B) FOR A PERSON WHOSE LICENSE, CERTIFICATION, OR REGISTRATION AS A MENTAL  
24 HEALTH PROFESSIONAL ISSUED UNDER ARTICLE 245 OF THIS TITLE 12 IS REVOKED, OR WHO  
25 SURRENDERS THE LICENSE, CERTIFICATION, OR REGISTRATION TO AVOID DISCIPLINE, THE  
26 PERSON IS INELIGIBLE TO APPLY FOR A NEW LICENSE, CERTIFICATION, OR REGISTRATION  
27 UNDER THAT ARTICLE FOR THREE YEARS AFTER THE DATE OF REVOCATION OR SURRENDER.

28 (b) THIS SUBSECTION (3) DOES NOT APPLY TO THE FOLLOWING:

29 (I) ARTICLE 110 OF THIS TITLE 12 CONCERNING COMBATIVE SPORTS;

30 (II) ARTICLE 125 OF THIS TITLE 12 CONCERNING FANTASY CONTESTS;

31 (III) ARTICLE 140 OF THIS TITLE 12 CONCERNING NONTRANSPLANT TISSUE BANKS;

32 (IV) ARTICLE 150 OF THIS TITLE 12 CONCERNING PASSENGER TRAMWAYS;

33 (V) ARTICLE 205 OF THIS TITLE 12 CONCERNING ATHLETIC TRAINERS;

34 (VI) ARTICLE 215 OF THIS TITLE 12 CONCERNING CHIROPRACTORS;

35 (VII) ARTICLE 260 OF THIS TITLE 12 CONCERNING NURSE AIDES;

36 (VIII) ARTICLE 295 OF THIS TITLE 12 CONCERNING PSYCHIATRIC TECHNICIANS; AND

37 (IX) ARTICLE 310 OF THIS TITLE 12 CONCERNING SURGICAL ASSISTANTS AND  
38 SURGICAL TECHNOLOGISTS.

39 (4) **Letter of admonition.** (a) When a complaint or investigation discloses an  
40 instance of misconduct that, in the opinion of ~~the director~~ A REGULATOR, does not warrant

1 formal action by the ~~director~~ REGULATOR but that should not be dismissed as being without  
2 merit, the ~~director~~ REGULATOR may issue and send a letter of admonition to the licensee,  
3 CERTIFICATE HOLDER, OR REGISTRANT.

4 (b) (I) When ~~the director~~ A REGULATOR sends a letter of admonition to a licensee,  
5 CERTIFICATE HOLDER, OR REGISTRANT pursuant to ~~paragraph (a) of this subsection (4)~~  
6 SUBSECTION (4)(a) OF THIS SECTION, the ~~director~~ REGULATOR shall also advise the licensee,  
7 CERTIFICATE HOLDER, OR REGISTRANT that he or she has the right to request in writing,  
8 within twenty days after ~~service~~ RECEIPT of the letter, that the ~~director~~ REGULATOR initiate  
9 formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the  
10 letter of admonition is based.

11 (II) If the licensee, ~~makes the request for~~ CERTIFICATE HOLDER, OR REGISTRANT  
12 TIMELY REQUESTS adjudication, the ~~director~~ REGULATOR shall vacate the letter of admonition  
13 and shall process the matter by means of formal disciplinary proceedings.

14 (c) THIS SUBSECTION (4) DOES NOT APPLY TO THE FOLLOWING:

15 (I) ARTICLE 205 OF THIS TITLE 12 CONCERNING ATHLETIC TRAINERS; AND

16 (II) ARTICLE 310 OF THIS TITLE 12 CONCERNING SURGICAL ASSISTANTS AND  
17 SURGICAL TECHNOLOGISTS.

18 (5) **Confidential letter of concern.** (a) When a complaint or investigation discloses  
19 an instance of conduct that does not warrant formal action by ~~the director~~ A REGULATOR and,  
20 in the opinion of the ~~director~~ REGULATOR, should be dismissed, but the ~~director~~ REGULATOR  
21 has noticed indications of possible errant conduct by the licensee, CERTIFICATE HOLDER, OR  
22 REGISTRANT that could lead to serious consequences if not corrected, the ~~director~~  
23 REGULATOR may send the licensee, CERTIFICATE HOLDER, OR REGISTRANT a confidential  
24 letter of concern.

25 (b) THIS SUBSECTION (5) DOES NOT APPLY TO THE FOLLOWING:

26 (I) ARTICLE 125 OF THIS TITLE 12 CONCERNING FANTASY CONTESTS;

27 (II) ARTICLE 140 OF THIS TITLE 12 CONCERNING NONTRANSPLANT TISSUE BANKS;

28 (III) ARTICLE 150 OF THIS TITLE 12 CONCERNING PASSENGER TRAMWAYS;

29 (IV) ARTICLE 205 OF THIS TITLE 12 CONCERNING ATHLETIC TRAINERS; AND

30 (V) ARTICLE 310 OF THIS TITLE 12 CONCERNING SURGICAL ASSISTANTS AND  
31 SURGICAL TECHNOLOGISTS.

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

36 (7) (6) **Disposition of fines.** (a) EXCEPT AS SPECIFIED IN SUBSECTION (6)(b) OF THIS  
37 SECTION, A REGULATOR SHALL TRANSMIT all fines collected pursuant to ~~this section shall be~~  
38 ~~transmitted~~ A PART OR ARTICLE OF THIS TITLE 12 to the state treasurer, who shall credit them  
39 to the general fund.

40 (b) THE DISPOSITION OF FINES COLLECTED BY:

- 1 (I) THE STATE ELECTRICAL BOARD IS GOVERNED BY SECTION 12-115-118 (7)(a);  
2 (II) THE DIRECTOR FOR VIOLATIONS OF LAWS GOVERNING THE ACTIVITIES OF  
3 OUTFITTERS AND GUIDES IS GOVERNED BY SECTION 12-145-107 (5); AND  
4 (III) THE STATE PLUMBING BOARD IS GOVERNED BY SECTION 12-160-116.5 (4)(a).