

CHAPTER 17D

INSURANCE PRODUCER STANDARDS OF CONDUCT: ADMINISTRATIVE PROCEDURES AND PENALTIES

Authority

N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-26 et seq.

Source and Effective Date

R.2005 d.237, effective June 21, 2005.
See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

Chapter Expiration Date

Chapter 17D, Insurance Producer Standards of Conduct: Administrative Procedures and Penalties, expires on June 21, 2010.

Chapter Historical Note

Chapter 17D, Insurance Producer and Limited Insurance Representative Standards of Conduct: Administrative Procedures and Penalties, was adopted as R.1990 d.11, effective January 2, 1990. See: 21 N.J.R. 1317(a), 22 N.J.R. 30(b), 22 N.J.R. 441(a).

Pursuant to Executive Order No. 66(1978), Chapter 17D, Insurance Producer and Limited Insurance Representative Standards of Conduct: Administrative Procedures and Penalties, was readopted as R.1995 d.60, effective December 30, 1999. See: 26 N.J.R. 4307(a), 27 N.J.R. 562(a).

Pursuant to Executive Order No. 66(1978), Chapter 17A, Insurance Producer Standards of Conduct: Administrative Procedures and Penalties, was readopted as R.2000 d.44, effective December 30, 1999. See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Chapter 17A, Insurance Producer Standards of Conduct: Administrative Procedures and Penalties, was readopted as R.2005 d.237, effective June 21, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL REQUIREMENTS

11:17D-1.1 Purpose and scope

This chapter is promulgated to describe the procedures for imposing administrative penalties, including the method of determining monetary fines, for violations of the provisions of N.J.S.A. Titles 17 and 17B and any rules or orders issued by the Commissioner. The procedures and penalties described apply to all insurers, insurance producers and other persons subject to the jurisdiction of the Commissioner.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Deleted "limited insurance representatives" preceding "and other persons".

11:17D-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Administrative order" means any and all orders issued or executed by the Commissioner, his designee and the Department, including, but not limited to, consent orders and orders to show cause.

"Administrative penalty" means a sanction authorized by any statute or administrative rule to be imposed by the Commissioner for any act or omission by a person subject to the Commissioner's or Department's jurisdiction, including the revocation, suspension or refusal to renew any license or authority to conduct any regulated activity; any monetary fine and any order to make restitution or to pay the reasonable cost of an investigation and prosecution of any matter. It shall not include the rejection and return of any application or filing for additions or correction of any error, unless a fine is imposed and must be paid as a condition of later acceptance of the application or filing.

"Commissioner" means the Commissioner of the Department of Banking and Insurance of the State of New Jersey.

"Department" means the New Jersey Department of Banking and Insurance.

"Hearing" means a hearing held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules adopted thereunder.

"Insurance producer" means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.

"Notice" means a written communication from the Department to an alleged violator of its intent to assess an

administrative penalty containing those elements set forth in N.J.A.C. 11:17D-2.1. A notice may be in the form of an administrative order such as a consent order or order to show cause.

“Person” means any individual, corporation, organization, association, partnership or legal entity.

“Time related violation” means the failure to meet a time limit or deadline imposed by statute, rule or administrative order. When such a time limit or deadline is not met, each day after the time limit or deadline passes shall be considered a separate and distinct violation.

Amended by R.2000 d.44, effective February 7, 2000.

See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Substituted a reference to this chapter for a reference to this subchapter in the introductory paragraph.

Amended by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Rewrote “Insurance producer”; deleted “Limited insurance representative”.

SUBCHAPTER 2. ADMINISTRATIVE PROCEDURES AND PENALTIES

11:17D-2.1 Procedures for the imposition of administrative penalties

(a) Rules concerning the initiation of action against an alleged violator follow:

1. Before an administrative penalty is imposed, the Department shall direct a notice by certified mail or personal delivery to the last known business or mailing address of the alleged violator. The notice shall include:

i. A reference to the statute, rule and/or administrative order alleged to be violated;

ii. A concise statement of the facts alleged to constitute the violation;

iii. A statement of the administrative penalty or penalties sought to be imposed; and

iv. A statement advising the alleged violator of the right to a hearing and the procedure for requesting a hearing.

2. The notice may describe more than one violation, or more than one specific penalty for each violation. A single form of notice may be used to notify several alleged violators, so long as all are named and served with a copy of the notice in conformity with the provisions of (a)3 below.

3. The notice shall be served by personal delivery, or by certified mail to the alleged violator’s last known business or mailing address, according to the files maintained by the Department. Service in this manner shall be considered lawful service on the alleged violator.

(b) Rules concerning the failure of an alleged violator to respond to a notice follow:

1. The alleged violator’s failure to respond, as required by the notice, within the time provided in the notice, shall be deemed to be an admission to all of the allegations, charges and conclusions contained in the notice, and no further proceeding shall be required prior to the execution of a final order that imposes the administrative penalty or penalties described in the notice.

2. If no response is received within the time provided in any notice to suspend or revoke a license or authority to conduct any activity regulated by Title 17 and 17B, the Department shall prepare a final order suspending or revoking the license or authority to conduct such activity, and mail a copy of the order to the violator at his or her last known business address on file with the Department.

3. If the notice provides for the payment of any fine, compels any restitution or reimbursement to the Department for investigative or prosecution cost, and payment or proof of payment has not been received, the Department may proceed to suspend or revoke the license or authority of the violator as provided in N.J.A.C. 11:17D-2.1.

(c) Rules concerning an alleged violator’s consent to an administrative penalty follow:

1. In order for matters set forth in a notice to be deemed concluded by means of a consent by the alleged violator to the imposition of the administrative penalty described in the notice, the Department may require any or all of the following:

i. The return to the Department for cancellation of any license or other written evidence of the authority to conduct the business of insurance in this State;

ii. The payment of a monetary penalty;

iii. The reimbursement to the Department of the costs of investigation and prosecution;

iv. The restitution of moneys owed any person; and

v. The execution of an administrative order which may include admissions of material facts, conclusions of law, and such other terms and conditions as the Commissioner, or his or her authorized designee may deem to be necessary and appropriate under the circumstances.

(d) Rules concerning a request by an alleged violator for a hearing follow:

Amended by R.2002 d.354, effective November 4, 2002.
See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Deleted former (e); recodified former (f) as (e) and rewrote the paragraph.

11:17D-2.6 Reinstatement after suspension of insurance producer license

(a) Upon completion of any period of suspension and upon the completion of all conditions contained in the order suspending an insurance producer's license, a former licensee may reapply for an insurance producer license by submitting a properly completed application as required by N.J.A.C. 11:17-2.3.

(b) The applicant shall submit with the application a copy of the order of suspension and an executed affidavit that states:

1. That the period of suspension has been completed;
2. That all required conditions for reinstatement as described in the order of suspension have been met;
3. That documents confirming that all conditions have been met, such as receipts for fines or restitution, satisfactions of judgement, etc. are attached to the affidavit; and
4. That the applicant has complied with all restrictions imposed by the order of suspension.

(c) If a resident producer, the applicant shall demonstrate compliance with the professional qualification provisions of N.J.S.A. 17:22A-32a(3) and (5).

Amended by R.2002 d.354, effective November 4, 2002.
See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (c), substituted "If a resident producer, the" for "The" and amended the N.J.S.A. references.

11:17D-2.7 Reinstatement after revocation of insurance producer license

(a) A person whose license has been revoked may, after five years from the effective date of any order revoking an insurance producer license, apply for reinstatement of the license on the form of application used for initial insurance producer license applicants.

(b) The applicant shall demonstrate compliance with the professional qualification requirements of N.J.S.A. 17:22A-32a(3) and (5).

(c) The applicant shall include with the application an affidavit containing the following information concerning the applicant's activities since revocation:

1. An employment history;
2. A statement concerning the other business interests, if any, of the applicant;
3. The manner of disposition of the applicant insurance producer business upon revocation of his or her insurance producer license;

4. Whether restitution has been made as a result of the activities that led to revocation, including the names and addresses of the persons or entities to whom restitution was made and amounts of restitution made;

5. Whether the applicant currently holds any other business, professional or occupational licenses in this or any other state;

6. Whether the applicant, or any business in which he or she owns five percent or more, is or has been a party to any legal or administrative proceedings in this or any other state, and if so a statement concerning the nature of the proceedings, the parties and the result or current status; and

7. A written statement by the applicant describing the manner in which he or she has improved during the period of revocation his or her reputation, character, trustworthiness, competency and worthiness to be an insurance producer.

(d) If the revocation was based upon the conviction of a crime or if the applicant was convicted of a crime since revocation, a report from the applicant's chief probation officer must be submitted with the application for licensing.

(e) The Commissioner, or his or her designee, shall review the application to determine whether reinstatement is warranted. The review of the application may include further investigation or inquiry, may require the applicant to provide additional information, and may further include a conference with Department personnel.

(f) If the Department is satisfied that reinstatement is warranted, the Department shall issue the license. If the Department is not satisfied that reinstatement is warranted, the Department shall deny the license in accordance with the procedures described in N.J.A.C. 11:17D-2.3.

Amended by R.2002 d.354, effective November 4, 2002.
See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

In (b), amended the N.J.S.A. references.

Case Notes

Pursuant to N.J.A.C. 11:17D-2.7, an individual whose producer license has been revoked may, after a period of five years, apply for reinstatement of the license, supporting the conclusion that revocation, rather than suspension, was appropriate in almost all cases wherein a licensed insurance producer committed acts that constituted insurance fraud; therefore, given a licensed insurance producer's repeated and egregious violations involving the theft of premium payments on insurance policies tendered to him as a licensed insurance producer, revocation was unquestionably appropriate. *Goldman v. Stone*, OAL Dkt. No. BKI 6301-07, 2008 N.J. AGEN LEXIS 1275, Final Decision (September 15, 2008).

Pursuant to N.J.A.C. 11:17D-2.7, an individual whose producer license has been revoked may, after a period of five years, apply for reinstatement of the license, supporting the conclusion that revocation, rather than suspension, was appropriate in almost all cases wherein a licensed insurance producer committed acts that constituted insurance fraud; therefore, an ALJ's penalty determination was modified from a suspension to a revocation of an insurance producer's license where the insurance producer induced a young associate to impersonate a prospective insured during a telephone interview with the insurer. *Goldman v. Battista*, OAL Dkt. No. BKI 4940-07, 2008 N.J. AGEN LEXIS 1274, Final Decision (September 2, 2008).

Pursuant to N.J.A.C. 11:17D-2.7, an individual whose producer license has been revoked may after a period of five years apply for reinstatement of the license; given the existence of this opportunity to seek re-entry into the profession after a five-year separation, the conclusion that revocation is the appropriate sanction in all cases where producer licensees are found to have personally committed insurance fraud, but for those in which truly extraordinary mitigating factors are present, is all the more inescapable. *Comm'r of Banking & Ins. v. Furman*, OAL Dkt. No. BKI 3891-06, 2007 N.J. AGEN LEXIS 994, Final Decision (September 17, 2007).

Where undisputed facts showed that licensee intentionally destroyed his clients' applications and premium payments, issued checks that were returned for insufficient funds, failed to remit premium payments, led his clients to believe that they had insurance coverage, commingled funds, failed to maintain a trust account, and failed to notify the Commissioner of his entry into a Letter of Consent with the NASD, licensee's low standards of operation, recordkeeping, and total disregard for insurance producer standards of conduct demonstrated that licensee was unfit to hold an insurance producer's license; therefore, the Commissioner affirmed the ALJ's decision that licensee's insurance producer license should be revoked and concurred that N.J.A.C. 11:17D-2.7 et seq., which bars reinstatement of the license until five years after an order of revocation, should apply notwithstanding that the license had earlier lapsed from non-renewal. *Goldman v. Erwin*, OAL Dkt. No. BKI 4573-06, 2007 N.J. AGEN LEXIS 995, Final Decision (September 17, 2007).

Given the existence of N.J.A.C. 11:17D-2.7, which offers an opportunity for offenders to seek re-entry into the profession after a five-year separation, revocation is the appropriate sanction in all but the most extraordinary cases where producer licensees are found to have personally committed insurance fraud. *Bryan v. Malek*, OAL Dkt. No. BKI 4520-05 and BKI 4686-05, 2006 N.J. AGEN LEXIS 92, Final Decision (January 18, 2006).

Request for reinstatement of license as an insurance broker following a prior revocation was denied absent a showing of rehabilitation. *Hudson v. Karpinski*, 95 N.J.A.R.2d (INS) 4.

11:17D-2.8 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Recodified from N.J.A.C. 11:17D-2.9 by R.2002 d.354, effective November 4, 2002.

See: 34 N.J.R. 2286(a), 34 N.J.R. 2549(b), 34 N.J.R. 3839(a).

Former N.J.A.C. 11:17D-2.8, Suspension or revocation of registration as a limited insurance representative, repealed.