

CHAPTER 17D

INSURANCE PRODUCER AND LIMITED INSURANCE REPRESENTATIVE STANDARDS OF CONDUCT: ADMINISTRATIVE PROCEDURES AND PENALTIES

Authority

N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22A-1 et seq., 17:29B-7, and 17B:30-13 and 15.

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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 was readopted as R.1995 d.60. See: Source and Effective Date.

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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 of Insurance. The procedures and penalties described apply to all insurers, insurance producers, limited insurance representatives and other persons subject to the jurisdiction of the Commissioner.

11:17D-1.2 Definitions

The following words and terms, when used in this subchapter, 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 Insurance of the State of New Jersey.

“Department” means the New Jersey Department of 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” is defined at N.J.S.A. 17:22A-2.

“Limited insurance representative” is defined at N.J.S.A. 17:22A-2m.

“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.

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:

1. An alleged violator shall have 20 calendar days from service of the notice of intent to impose an administrative penalty within which to deliver a written request for a hearing to: Administrator, Enforcement, New Jersey Department of Insurance, PO Box 325, Trenton, New Jersey 08625-0325.

2. A request for a hearing shall include:

- i. The name, address and daytime telephone number of the alleged violator;
- ii. A copy of the notice;
- iii. A statement requesting a hearing;
- iv. A specific admission, denial or explanation of each fact alleged in the notice, or a statement that the person is without knowledge thereof; and
- v. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense.

3. If a hearing request fails to include a specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge thereof, the facts alleged in the notice shall be deemed to have been admitted.

4. If a hearing request lacks any of the elements in (d)2 above, the Department may deny the request or by certified mail advise the person of the deficiencies and provide an additional 10 calendar days from the issuance of the deficiency letter to correct them. If no reply correcting the deficiencies is received by the Department within 10 calendar days, the Department may issue a final order without granting a hearing.

5. Upon receipt of a properly completed request for a hearing, the Administrator of Enforcement or such other Department personnel as may be designated by the Commissioner, shall examine the request and may conduct or direct such further proceedings as may be appropriate, including but not limited to an interview with the alleged violator.

6. Not later than 60 days after the receipt of a properly completed request for a hearing, the Administrator of Enforcement, or such other Department personnel as may be designated by the Commissioner, shall advise the alleged violator of the manner of disposition, which may be as follows:

- i. Terminated with or without prejudice;
- ii. Resolved by consent order, which may provide for a lesser or different administrative penalty; or
- iii. A finding that the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In such a case, the Department shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Practice Rules, N.J.A.C. 1:1.

Case Notes

Interim suspension of insurance licenses during course of administrative hearing process was modified to restriction on types of insurance that licensees could sell. *New Jersey Department of Insurance v. Sarris Financial Group, Inc.*, 96 N.J.A.R.2d (INS) 77.

Agents charged with misconduct who voluntarily surrendered their licenses were not entitled to hearing on issue of fitness when their applications for license renewal were denied. *Department of Insurance v. Schemanski*, 96 N.J.A.R.2d (INS) 61.

Transgressions of insurance producer licensees were such as to require revocation of licenses and imposition of fines. *Fortunato v. R.R. Brown & Co.*, 95 N.J.A.R.2d (INS) 11.

Revocation of insurance producer's license and assessment of penalty were proper. *Fortunato v. Shipitofsky*, 94 N.J.A.R.2d (INS) 39.

Insurance producer's license properly revoked and penalties imposed. *Department of Insurance v. Shih*, 94 N.J.A.R.2d (INS) 34.

Insurance producer's license revoked; placing commercial automobile coverage with unauthorized or non-existent carriers. *Fortunato v. Blumeyer*, 94 N.J.A.R.2d (INS) 13.

Penalties and license revocation; accepting premiums and failing to remit or refund payments, issuing bad checks. *Fortunato v. Vale Insurance Agency, Inc.*, 94 N.J.A.R.2d (INS) 9.

Backdating automobile policy warranted revocation of license. *Fortunato v. Winograd*, 93 N.J.A.R.2d (INS) 46.

Charging fee without written memorandum warranted fine. *Fortunato v. Bandoroff*, 93 N.J.A.R.2d (INS) 41.

Insurance fraud warranted revocation of license. *Fortunato v. Del Mauro*, 93 N.J.A.R.2d (INS) 37.

Backdating insurance application warranted revocation of license. *Fortunato v. Leiber*, 93 N.J.A.R.2d (INS) 20.

Rendering services as insurance producer without current license warrants fine. *Fortunato v. Bonavita*, 92 N.J.A.R.2d (INS) 77.

Defrauding federal government barred application for insurance producer license. *Scafuro v. New Jersey Department of Insurance*, 92 N.J.A.R.2d (INS) 67.

Producer license revoked for failure to provide notice of criminal conviction. *Fortunato v. Monteiro*, 92 N.J.A.R.2d (INS) 22.

11:17D-2.2 Monetary penalty for time related violations

(a) Time related violations shall include the following:

1. When an insurance producer or limited insurance representative fails to respond to an inquiry of the Department within the time requested or within 15 calendar days from the date of the inquiry if no response date is given; or

2. When an insurance producer or limited insurance representative fails to act within or continues his or her actions during the time established or proscribed by a statute, administrative rule or order.

(b) Each calendar day that an insurance producer or limited insurance representative is in violation of (a)1 or 2 above shall be considered a separate violation and the Commissioner may impose the maximum penalty provided therefor by law.

11:17D-2.3 Alternative remedies

Neither the assessment of administrative penalties nor the payment of any such penalty shall be deemed to affect the availability to the Department of any other enforcement provision provided for by statute, rule or administrative order, in connection with the violation for which the penalty is levied.

Case Notes

Altering records, mitigated by nine years of unblemished record, warranted fine and suspension only. *Fortunato v. Morris*, 93 N.J.A.R.2d (INS) 17.

11:17D-2.4 Schedules of fines for certain insurance producer licensing violations

(a) The Department shall impose fines for certain insurance producer violations in accordance with the following schedule:

1. Failure to maintain on file with the Department a complete and accurate business or home address or to notify the Department of a change of business or home address within 20 calendar days: \$250.00, except where notification is delayed beyond 60 calendar days, including

the aforesaid 20 days, in which case the violator is subject to the maximum penalty provided by law;

2. Failure to notify the Department of the opening of a branch office within 30 days or the closing of a branch office within 20 days: \$500.00;

3. Payment of a license or processing fee with a check later returned for insufficient funds or because the account is closed: \$500.00;

4. Failure to notify the Department of a change of business name within 30 days: \$250;

5. Failure to notify the Department of the addition or deletion of owners of more than five percent or officers, directors or partners: \$250.00;

6. Failure to maintain in at least one office with an address on file with the Department copies of all employment contracts and copies of all agency contracts: \$100.00 per contract; and

7. Upon demand by a licensed insurance producer, the failure by an employing insurance producer, insurer, or other custodian to return a license to the possession of the named insurance producer: \$500.00.

(b) The fines identified in (a) above are applicable to first offenders only. Repeat offenders shall be subject to the maximum penalties provided by law.

Case Notes

Aiding, abetting and assisting an insurance agency to engage in insurance business during period of suspension warranted imposition of fine against licensed insurance producer. *Fortunato v. Da Silva*, 95 N.J.A.R.2d (INS) 1.

11:17D-2.5 Effect of suspension or revocation of producer license

(a) Upon service of any final order suspending or revoking an insurance producer license, the insurance producer shall immediately return to the Department for cancellation any license in his or her possession.

(b) Imposition of a period of suspension or of revocation shall sever any existing agency relationships with insurance companies, employment relationships with other insurance producers, and licensed officer or partner relationships with any licensed organization. In the event a license is later reinstated, those relationships shall be reestablished by refiling in accordance with N.J.A.C. 11:17-2.9.

(c) No other licensed individual or organization shall advertise, display or conduct any insurance business using the legal or business name of any person whose license has been revoked.

(d) No person whose insurance producer license has been suspended or revoked shall be entitled to any refund of license fees for the unexpired term of any license issued.

(e) No person whose insurance producer license has been suspended or revoked shall become or act as a limited insurance representative during the period of suspension or revocation.

(f) In accordance with N.J.S.A. 17:22A-18, no person whose license has been suspended or revoked may be a partner, officer, director or owner of a license organization, or otherwise be employed in any capacity by an insurance producer.

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) The applicant shall demonstrate compliance with the professional qualification provisions of N.J.S.A. 17:22A-4(c) and N.J.S.A. 17:22A-4(d).

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-4(c) and N.J.S.A. 17:22A-4(d).

(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.

Case Notes

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 Suspension or revocation of registration as a limited insurance representative

(a) No person whose registration as a limited insurance representative has been suspended or revoked may be registered or conduct business as a limited insurance representative or as an insurance producer during the period of suspension or revocation.

(b) Imposition of a period of suspension or revocation shall terminate the existing relationship between the limited insurance representative and the insurance company that registered the representative.

(c) Upon completion of the period of suspension, or not less than five years in the case of revocation, the limited insurance representative may be re-registered by any company if all other conditions that may have been imposed by the order of suspension or revocation have been satisfied.

11:17D-2.9 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.