

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The Department may revoke or suspend a license, and/or assess a civil penalty in accordance with N.J.A.C. 5:23-2.31, if the Department determines that the person involved, at any time during the preceding 10-year period:

1. Has violated the provisions of the Uniform Construction Code regulations;
2. Has obtained a license by fraud or misrepresentation, or the person named in the licensed has obtained it by fraud or misrepresentation;
3. Has aided or abetted in practice as a licensed code enforcement official any person not authorized to practice as a licensed code enforcement official under the provisions of these regulations;
4. Has fraudulently or deceitfully practiced as a licensed code enforcement official;
5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;
6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;
8. Has failed to comply with any order issued by the department;
9. Has made a false or misleading written statement, or has made a material omission in any submission to the department;
10. Has engaged in any conduct which demonstrates incompetency or dishonesty; or
11. Has failed to enforce the Uniform Construction Code Act or regulations.

(b) The Department, in addition or as an alternative, as the case may be, to revoking or suspending a license, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand or censure. Such letters, in addition to any other filing of requirements, shall be made a part of the licensing file of the individual.

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector, or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2 or 4.14(f), shall constitute grounds for revocation of a license.

(d) The Commissioner shall appoint review committees to advise the Department concerning the appropriateness of

sanctions that the Department proposes to take against persons licensed under the respective subcodes who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committees.

1. Each review committee shall consist of three persons who are licensed as subcode officials in the subcode, and are currently employed by municipalities as subcode officials in the subcode and/or as construction officials. To be eligible for appointment to a review committee, a construction official shall have had experience as a subcode official employed by a municipality in that subcode. Of the persons appointed, at least two shall also be licensed as construction officials and at least one shall be employed by at least one enforcing agency for a total of not more than 20 hours per week.

2. Members of the review committees shall be appointed by the Commissioner and shall serve for terms of three years, and until their successors shall have been appointed; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years.

3. The Commissioner shall also appoint two alternate members of each committee, who shall be persons licensed as subcode officials in the subcode and currently employed by municipalities as subcode officials in the subcode and/or as construction officials. To be eligible for appointment as an alternate member of a review committee, a construction official shall have had experience as a subcode official employed by a municipality in that subcode. The Commissioner shall designate each alternate as either a first or a second alternate. Alternates shall serve for two years, and until their successors shall have been appointed, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

4. The Commissioner shall give the State organizations of officials and inspectors in each subcode an opportunity to comment on persons proposed to serve as members or alternate members of each review committee prior to their appointment.

5. No review committee shall hear any case or issue any recommendation without three members, who may be either regular or alternate members, being present.

6. In any case in which the Department makes a preliminary finding that a licensee has done any act or omission proscribed under (a) above, it shall have the case reviewed by the appropriate review committee prior to the issuance of any order revoking or suspending the license or assessing a civil penalty.

7. The Department shall present whatever evidence it may have to the review committee. The licensee shall be given notice of the meeting of the review committee and may appear before the review committee to present his or

her position, but there shall be no cross-examination of either the licensee or any representative of the Department. Nothing said by the licensee or by any other persons at the meeting of the review committee shall be used in any way, nor shall any member of a review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

8. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director for Construction Code Enforcement within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director for Construction Code Enforcement. Failure of a review committee to submit a timely recommendation shall be deemed to be concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the licensee.

9. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the advisory committee shall be deemed to be only a recommendation that is not binding on the Department.

10. A licensee shall be entitled to contest any order imposing sanctions in an administrative hearing, pursuant to N.J.A.C. 5:23-5.2, regardless of whether he or she has exercised the option of appearing before a review committee.

(e) If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.

As amended, R.1978 d.350, effective October 1, 1978.
See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

As amended, R.1981 d.134, effective April 10, 1981.
See: 13 N.J.R. 119(a), 13 N.J.R. 258(b).

(b) added, and old (b) renumbered as (c).

As amended, R.1982 d.8, effective February 1, 1982.
See: 13 N.J.R. 799(b), 14 N.J.R. 143(a).

Catchline: added "and alternative sanctions".

(a): added "or assess ... \$500.00"; (a)8-10 added.

(b): added "or assessing a penalty"; deleted "does not warrant ... suspension"; added "warrants ... censure"; deleted "of warning ... censure".

As amended, R.1982 d.436, effective December 20, 1982.
See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added "of a crime, or conviction of an offense" and "shall constitute" to (c).

Amended by R.1985 d.528, effective October 21, 1985.
See: 17 N.J.R. 1705(a), 17 N.J.R. 2535(b).

Added test in (a) "suspend a license for not more than 60 days and".

Amended by R.1985 d.612, effective January 6, 1986.
See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.11.

Amended by R.1986 d.173, effective May 19, 1986.
See: 18 N.J.R. 16(b), 18 N.J.R. 1099(b).

(a)10 added; old (a)10 renumbered (a)11. This amendment was proposed under the old citation 5:23-5.11.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

This section recodified from section 26.

Amended by R.1992 d.68, effective February 3, 1992.

See: 23 N.J.R. 3441(a), 24 N.J.R. 406(a).

Text on review committees added at (d).

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Stylistic changes.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (e).

Amended by R.1996 d.545, effective December 2, 1996.

See: 28 N.J.R. 3997(a), 28 N.J.R. 5071(b).

Amended by R.2004 d.365, effective October 4, 2004.

See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

In (a), substituted "in accordance with N.J.A.C. 5:23-2.31" for "of not more than \$500.00" in the introductory paragraph.

Amended by R.2004 d.366, effective October 4, 2004.

See: 36 N.J.R. 2606(a), 36 N.J.R. 4442(a).

In (d)2, deleted the second sentence.

Amended by R.2008 d.273, effective September 15, 2008.

See: 40 N.J.R. 2630(a), 40 N.J.R. 5195(c).

In (c), inserted "or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2," and deleted "or suspension" following "revocation".

Amended by R.2008 d.332, effective November 3, 2008.

See: 40 N.J.R. 4270(a), 40 N.J.R. 6439(a).

In the introductory paragraph of (a), inserted "or suspend" and ", at any time during the preceding 10-year period", and deleted "suspend a license for not more than 60 days," following "a license,".

Amended by R.2010 d.291, effective December 20, 2010.

See: 42 N.J.R. 1943(a), 42 N.J.R. 3053(a).

In (c), inserted "or 4.14(f)".

Case Notes

N.J.A.C. 5:23-5.25(d) applies only when the Department of Community Affairs is sanctioning a licensee with suspension, revocation and/or a penalty; a private on-site inspection agency was not "licensee" of the DCA and, therefore, was not entitled to a committee review prior to the issuance of a Notice of Violation and Order to Pay Penalty (adopting with modification 2009 N.J. AGEN LEXIS 700). Office of Regulatory Affairs v. EIC Inspection Agency Corp., OAL Dkt. No. CAF 01069-09, 2009 N.J. AGEN LEXIS 1022, Final Decision (November 12, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 764) adopted, which affirmed denial of a building inspector license because the applicant made false and misleading statements on the application; the applicant answered criminal history questions in the negative although the applicant had a criminal history and was on probation. Bureau of Code Services v. Guerriero, OAL Dkt. No. CAF 09580-07, 2008 N.J. AGEN LEXIS 38, Final Decision (January 3, 2008).

Code official's issuance of permits to a builder during the same period of time in which the official was providing compensated architectural services to the builder violated not only N.J.A.C. 5:23-5.25(a)5, but also N.J.A.C. 5:23-4.5(j)2. Easse v. Dep't of Community Affairs, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 109) adopted, which found that petitioner's second application for licensure as an elevator operator was properly denied where it was filed 10 months after his first application was denied for dishonesty after lying about his criminal background, a violation of this section and N.J.A.C. 5:23-5.5. Although previously requested to do so, petitioner failed to provide sufficient information to determine whether he had been rehabilitated. LaBarca v. Bureau of Code Services, OAL Dkt. No. CAF 8445-06, 2007 N.J. AGEN LEXIS 342, Final Decision (May 22, 2007).

Where a building inspector accepted bribes relating to inspections and attempted to negotiate a bribe larger than originally offered, the dishonesty demonstrated by the inspector's admitted misconduct necessitated the revocation of all of his construction code licenses, including