

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

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17D, Insurance Producer Standards of Conduct: Administrative Procedures and Penalties, expires on December 18, 2010. See: 42 N.J.R. 1470(a).

Chapter Historical Note

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

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, 1994. See: 26 N.J.R. 4307(a), 27 N.J.R. 562(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.2000 d.44, effective December 30, 1999. See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

Chapter 17D, Insurance Producer and Limited Insurance Representative Standards of Conduct: Administrative Procedures and Penalties, was renamed Insurance Producer Standards of Conduct: Administrative Procedures and Penalties, by R.2002 d.354, effective November 4, 2002. See: 34 N.J.R. 2286(a), 34 N.J.R. 2459(b), 34 N.J.R. 3839(a).

Chapter 17D, 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. 2459(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:

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: Manager of Enforcement, New Jersey Department of Banking and Insurance, PO Box 329, Trenton, New Jersey 08625-0329 or faxed to the Department at (609) 292-5337.

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 Manager 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 Manager 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.

Amended by R.2000 d.44, effective February 7, 2000.
See: 31 N.J.R. 3583(a), 32 N.J.R. 499(a).

In (d)1, added "or faxed to the Department at (609) 292-5337".

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 (d), substituted references to Manager for references to Administrator in 1, 5 and the introductory paragraph of 6.

Case Notes

Order to Show Cause (OTSC) constituted the notice referenced in N.J.A.C. 11:17D-2.1(b)1; although the licensee initially responded to the OTSC, the licensee's subsequent repeated failures to respond to Orders and scheduling notices from the ALJ constituted "failure to respond as required by the notice, within the time period provided in the notice" within the meaning of that phrase in N.J.A.C. 11:17D-2.1(b)1. Accordingly, all violations alleged in the OTSC were deemed admitted. *Goldman v. Budge*, OAL Dkt. No. BKI 10260-2004S, 2007 N.J. AGEN LEXIS 515, Final Decision (June 28, 2007).

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 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 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 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.

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 "or limited insurance representatives" throughout.

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 30 calendar days as required by N.J.A.C. 11:17-2.7(f): \$250.00, except where notification is delayed beyond 60 calendar days, including the aforesaid 30 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 as required by N.J.A.C. 11:17-2.8(c): \$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 obtain approval for the use of a business name from the Department prior to conducting business

under that name as required by N.J.A.C. 11:17-2.7(c): \$250.00;

5. Failure to notify the Department within 30 days of the addition or deletion of owners of more than five percent or officers, directors or partners as required by N.J.A.C. 11:17-2.11(c): \$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 in accordance with N.J.A.C. 11:17-2.9: \$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.

Amended by R.2005 d.237, effective July 18, 2005.

See: 37 N.J.R. 413(a), 37 N.J.R. 2691(c).

In (a), substituted "30" for "20". in 1, rewrote 4, and inserted the N.J.A.C. references throughout

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 re-filing 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 license has been suspended or revoked may be a partner, officer, director or owner of a licensed business entity, or otherwise be employed in any capacity by an insurance producer.