

§10015. Investigation; refusal of license or renewal; disciplinary action

1. Complaints; investigations. The board shall investigate or cause to be investigated a complaint made on its own motion or on written complaint filed with the board and all cases of noncompliance with or violation of this chapter or of any rules adopted by the board.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

2. Grounds for disciplinary action. The following are grounds for an action to modify, reclassify, suspend, revoke or refuse to issue or renew a certificate or impose a civil penalty:

A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued; [PL 1985, c. 496, Pt. A, §2 (NEW).]

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation or removal, underground gasoline storage tank removal or underground oil storage tank inspection or violation of any standard of professional behavior established by the board; [PL 2001, c. 231, §16 (AMD).]

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or [PL 1989, c. 845, §12 (AMD).]

D. Any violation of this chapter or any rule adopted by the board. [PL 1985, c. 496, Pt. A, §2 (NEW).]

[PL 2007, c. 292, §11 (AMD).]

2-A. Disciplinary action authority. For each violation of applicable laws, rules or conditions of certification, the board may take one or more of the following actions:

A. Issue warnings, censures or reprimands to a certified person or applicant. Each warning, censure and reprimand issued must be based on violations of different applicable laws, rules, or conditions of certification or on separate instances of actionable conduct or activity; [PL 1989, c. 845, §13 (NEW).]

B. Suspend a certificate for up to 90 days for each violation or instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and, in total, may not exceed one year. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certified person's record; [PL 1989, c. 845, §13 (NEW).]

C. Impose civil penalties of up to \$1,500 for each violation or each instance of actionable conduct or activity; [PL 1989, c. 845, §13 (NEW).]

D. Impose conditions of probation upon an applicant or certified person. Probation may run for such time period as the board determines appropriate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder; [PL 1989, c. 845, §13 (NEW).]

E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and [PL 1989, c. 845, §13 (NEW).]

F. Refuse to issue or renew a certificate. [PL 1989, c. 845, §13 (NEW).]

[PL 1989, c. 845, §13 (NEW).]

2-B. Consent agreements. The board may execute a consent agreement which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant, the board and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if in the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

[PL 1989, c. 845, §13 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

2-C. Surrender of certificate. The board may require surrender of certificates. In order for a certified person's surrender of a certificate to be effective, a surrender must first be accepted by vote of the board. The board may refuse to accept surrender of the certificate if the certified person is under investigation or is the subject of a pending complaint or proceeding unless a consent agreement is first entered into pursuant to this chapter.

[PL 1989, c. 845, §13 (NEW).]

3. Criminal penalty. Any person who violates a provision of this chapter or any lawful order or rule adopted by the board is guilty of a Class E crime.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

4. Injunction. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the District Court or whether criminal proceedings have been or may be instituted.

[PL 1985, c. 496, Pt. A, §2 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

5. Reinstatement. An application for reinstatement may be made to the board one year from the date of revocation of a certificate. The board may accept or reject the application and hold a hearing to consider the reinstatement.

[PL 1985, c. 496, Pt. A, §2 (NEW).]

6. Limitation of actions. An action by the board against a certified person for any violation of this chapter relating to a tank or equipment installed on or after September 16, 1991 must be commenced within 3 years after the violation is discovered, but the action may not be commenced more than 15 years after installation of the storage tank or equipment that is the subject of the violation.

[PL 1999, c. 714, §1 (NEW).]

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Superior Court. Civil penalties accrue to the Maine Ground and Surface Waters Clean-up and Response Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7, notwithstanding any other provision of law. [PL 2015, c. 319, §5 (AMD).]

SECTION HISTORY

PL 1985, c. 496, §A2 (NEW). PL 1987, c. 410, §17 (AMD). PL 1989, c. 312, §15 (AMD). PL 1989, c. 845, §§12-14 (AMD). PL 1997, c. 364, §16 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 1999, c. 714, §1 (AMD). PL 2001, c. 231, §16 (AMD). PL 2005, c. 330, §2 (AMD). PL 2007, c. 292, §11 (AMD). PL 2015, c. 319, §5 (AMD).

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