

Chapter 17

Post Licensing Producer Conduct Reviews

Section 12 of the *Producer Licensing Model Act* (#218) contains a list of 14 reasons a producer may be disciplined. The insurance commissioner is given authority to take administrative action against a producer who commits any of these acts. Disciplinary action may include suspension, revocation or refusal to renew the producer license. Some states have added additional provisions to this list. For example, if a state does not align the continuing education (CE) compliance term with license renewal, it may be necessary to commence an administrative action to suspend the producer's license for failure to timely complete CE. In some states, insurance departments are required to suspend the license of any individual who fails to pay student loans on a timely basis.

States should use caution in adding additional disciplinary reasons and carefully review the requirements of the Uniform Licensing Standards (ULS). The full text of Model #218 can be found in the Appendices.

After a license is issued, a state insurance regulator may become aware of potential violations of Section 12 in several ways:

1. A licensed producer notifies the state insurance regulator of pending criminal charges.
2. The state insurance regulator receives a notice from the NAIC Personalized Information Capture System (PICS) indicating that a nonresident producer failed to disclose criminal charges.
3. A PICS Notice is received of previously unreported administrative action.
4. A letter is received from the producer informing of an administrative sanction by another state or the Financial Industry Regulatory Authority (FINRA).
5. The state insurance regulator receives subsequent arrest or conviction information from the state's department of justice (DOJ).

The following considerations should be taken into account:

1. If the producer is a nonresident, the state insurance regulator should consider what, if any, action was taken by the producer's resident state or FINRA.
2. Whether the criminal charge or administrative action indicates that the producer is or may be a danger to consumers.
3. Whether the charge involves theft or other financial fraud, or involves an activity that threatens the safety of consumers, such that action should be taken immediately to revoke or suspend the producer's license.
4. Whether it is appropriate to contact the producer and request a voluntarily surrender of the license.
5. If the producer failed to report an action, the state insurance regulator should consider contacting the producer and requesting an explanation from the producer. Technical violations (e.g., bad address, failure to timely report, etc.) generally do not merit formal action. However, the failure to report an action in itself can be cause for administrative penalty or a warning letter, depending on the particular state's statutes and regulations.
6. Whether the individual did not disclose previous criminal or administrative actions taken in response to the answers to the background questions on any application.

License Reinstatement or Reissuance After Disciplinary Action

Reinstatement of a producer license means the producer's previous license is re-activated and will expire at the end of the license term. Reissuance of a license means the issuance of a new license with a full license term.

Reinstatement or reissuance of a license after disciplinary action is usually not automatic. A producer whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, should be required to make a written request to the insurance commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

When a producer's license has been suspended for a period of time that extends beyond the producer's license expiration date, reinstatement is not an option. The producer must request reissuance of a license and should not be allowed to merely apply for a new license by passing an examination and submitting a new application.

The producer's request for reinstatement or reissuance must include sufficient information to allow the insurance department to determine whether the basis of the revocation, suspension or forfeiture of the applicant's license no longer exists and whether it will be in the public interest to grant the request for a new or reinstated license. The burden of proof to establish such facts is on the producer. In most states, the producer will have a right to an administrative hearing if the reinstatement request is denied.

Some states allow a license to be voluntarily forfeited in lieu of compliance with an order of the insurance commissioner. In this scenario, a request for voluntary forfeiture of a license should be made in writing to the insurance commissioner. The written consent of the insurance commissioner is usually required.

Forfeiture of a license is effective upon submission of the request, unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the insurance commissioner. A forfeiture made during the pendency of a contested case proceeding is usually considered a disciplinary action subject to reporting to the Regulatory Information Retrieval System (RIRS).

Collaboration and Referrals Among State Insurance Regulators

There are several NAIC tools to facilitate communication about enforcement actions among state insurance regulators.

The NAIC's Market Actions (D) Working Group identifies and reviews insurance companies that are exhibiting or may exhibit characteristics indicating a current or potential market regulatory issue that may affect multiple jurisdictions. The Working Group determines if regulatory action should be taken and supports collaborative actions in addressing problems identified.

The NAIC has adopted the *Market Regulation Handbook* to guide state insurance regulators in the conduct of investigations and enforcement activities. The *Market Regulation Handbook* also gives guidance to market conduct examiners on some licensing issues. The Producer Licensing (EX) Working Group has advised examiners that insurers should not be required to keep a hard copy of each individual producer license. Under Model #218 and the *Market Regulation Handbook*, insurers and state insurance regulators are directed to rely on the State Producer Licensing Database (SPLD) to verify license status.

Recommended Best Practices for State Insurance Regulators

- Report all formal final administrative actions to the RIRS regardless of the voluntary forfeiture, fine or penalty amount.
- Use the Central Registration Depository (CRD), SPLD, RIRS, 1033 Application, PICS, and state court records to verify information submitted by applicants. State court records databases may be available online to analysts.
- Check the producer's resident or home state's website or other licensing records to verify actions reported or taken by that state. The NAIC website has a map with links to each state insurance department's website.
- Develop form letters or consent order templates pre-approved by legal staff to be used by experienced licensing staff to propose the settlement of minor violations without the need to involve legal staff.
- Adopt an administrative rule that if an order of revocation or suspension does not contain terms regarding reissuance or reinstatement, an application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order or acceptance of the forfeiture of a license.
- Maintain a record tickler system of all special conditions imposed on any producer licenses so that the compliance with the conditions can be reviewed as the end of any special supervision term nears.