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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (Division 1 enacted by Stats. 1935, Ch. 145.)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (Part 2 enacted by Stats. 1935, Ch. 145.)

CHAPTER 5. Production Agencies [1621 - 1758.993] (Chapter 5 repealed and added by Stats. 1959, Ch. 4.)

ARTICLE 13. Disciplinary Actions [1737 - 1748.5] (Article 13 added by Stats. 1959, Ch. 4.)

1737. The purpose of this chapter is to protect the public by requiring and maintaining professional standards of conduct on the part of all persons licensed hereunder.

(Repealed and added by Stats. 1959, Ch. 4.)

1738. The commissioner may suspend or revoke a permanent license issued pursuant to this chapter on any of the grounds set forth in Article 6 hereof on which the commissioner may deny an application. When the word "applicant" is used in those grounds, the word shall for the application of this section be the words "the holder of a permanent license." A suspension or revocation based upon a ground set forth in Section 1669 may be without notice or hearing. Suspension or revocation of any permanent license, except a restricted license, on a ground other than that set forth in Section 1669 shall be after notice and hearing conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner has all of the powers granted therein.

(Amended by Stats. 2021, Ch. 133, Sec. 25. (SB 272) Effective July 23, 2021.)

1738.5. Upon the request of the department, a proceeding held pursuant to Section 1668, 1668.5, 1738, 1739, or 12921.8 that involves allegations of misconduct perpetrated against a person age 65 or over shall be held within 90 days after receipt by the department of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. If the Office of Administrative Hearings cannot accommodate a hearing within 90 days, the hearing shall be set on the earliest available date and the delay shall not prejudice either party. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

- (a) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of any of these persons, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.
- (b) Lack of notice of hearing as provided in Section 11509 of the Government Code.
- (c) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.
- (d) A stipulation for continuance signed by all parties, or their authorized representatives, that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.
- (e) The substitution of the representative or attorney of a party upon showing that the substitution is required.
- (f) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact, due to a conflicting and required appearance in a judicial matter if, when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict, with the request for continuance, is immediately communicated to the administrative law judge.
- (g) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.
- (h) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(Amended by Stats. 2020, Ch. 184, Sec. 19. (SB 1255) Effective January 1, 2021.)

1739. Where a permanent license is held by an organization both the organization itself and any natural persons named thereon shall, for the purposes of this article, be deemed to be the holders thereof. If that natural person commits any act or fails to perform any duty which is a ground for suspension or revocation of the license held by the organization, that action may be taken against the organization. If any natural person named under an organization license commits any act or fails to perform any duty which is a ground for the suspension or revocation of any license held by the organization, the commissioner may suspend or revoke the license of the organization, or the license of the natural person, or may take all of those steps.

(Amended by Stats. 1990, Ch. 1420, Sec. 61. Operative January 1, 1992, by Sec. 77 of Ch. 1420.)

1740. The certificate of the commissioner certifying any facts found after a hearing held under this chapter shall be prima facie evidence of the facts set forth therein.

(Repealed and added by Stats. 1959, Ch. 4.)

1741. If the commissioner finds, after a hearing, that there are grounds for the denial of an application for a license to act in any capacity set forth in Article 1 of this chapter or if the commissioner finds, after a hearing, that any licensee has violated the provisions of this code and that the violation would justify the suspension or revocation of any license held by the person, the commissioner may order the licensee to prove the licensee's qualifications by taking and passing the qualifying examination for any license held or applied for. The commissioner shall set the time for the taking of the examination. Failure thereof by any licensee shall result in the termination of all licenses of the licensee to which the examination is applicable. An order to take the examination may be in lieu of any other action in respect to the application or the license, or, except in the case of revocation, may be in addition to any other action.

(Amended by Stats. 2021, Ch. 133, Sec. 26. (SB 272) Effective July 23, 2021.)

1742. Where a person who is or has been licensed under this chapter has been found by the commissioner to have violated any provision of this code which would justify the suspension or revocation of a license held, or where a person is applying for a license under this chapter and there exists grounds for the denial by the commissioner of his application, the commissioner may, after hearing, revoke the license held or deny the application for an unrestricted license, and in lieu thereof issue to such a person a restricted license. The commissioner may impose any reasonable conditions upon the acquisition of such restricted license or the conduct of the holder thereof. The holder of the restricted license has no property right therein and the commissioner may, with or without either hearing or cause, suspend or revoke a restricted license. If a hearing is held under this section, it shall be conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code. The holder of a restricted license is subject to all the provisions of this code and such license shall be kept in force and renewed in the same manner, at the same time, and subject to the same conditions and fees as are applicable to an unrestricted license to act in the same capacity.

(Added by Stats. 1959, Ch. 4.)

1742.2. The department shall promulgate regulations necessary to comply with the requirements of Section 1033 of Title 18 of the United States Code no later than January 1, 2001.

(Added by Stats. 1999, Ch. 782, Sec. 5. Effective January 1, 2000.)

1742.3. (a) The commissioner may, without hearing, issue an order denying an application by a business entity for an unrestricted license and granting instead a restricted license. The commissioner may do so when a controlling person of the business entity, as defined in subdivision (b) of Section 1668.5, holds a restricted license. The commissioner may impose any reasonable restriction on the business entity's authority to transact insurance that is similar or related to the restriction imposed upon the controlling person. A description of the nature and scope of the restriction imposed upon the business entity shall be included in the commissioner's order. The business entity shall have no property right in the restricted license and the commissioner may, with or without hearing or cause, suspend or revoke the restricted license. The restricted license shall be issued in the normal course of business following the issuance of the order and shall remain in effect pending the outcome of any request for reconsideration and any decision following a hearing pursuant to that request.

(b) The business entity may request reconsideration of the commissioner's decision to deny an unrestricted license within 30 days from the date that the decision is mailed to the entity. If the business entity requests a hearing on the request for reconsideration, the hearing shall be conducted pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, and the business entity shall bear the burden of proving by clear and convincing evidence that an unrestricted license should have been granted instead of a restricted license. If the commissioner determines, after a hearing, that the business entity should have been granted an unrestricted license, the entity shall be granted that unrestricted license retroactive to the date of the granting of the restricted license.

(Added by Stats. 2010, Ch. 400, Sec. 13. (AB 2782) Effective January 1, 2011.)

1743. The lapse or suspension of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such license, to render a decision suspending or revoking such license or to establish and make a record of the facts of any violation of law for any lawful purpose. No such disciplinary proceeding shall be instituted against any license after the expiration of five years from the termination of such license.

(Added by Stats. 1959, Ch. 4.)

1744. The filing of a statement of issues pursuant to Chapter 5, Part 1, Division 3, Title 2 of the Government Code specifying grounds for denial of an application for a license to act in any capacity under this chapter shall automatically suspend any certificate of convenience issued with respect to any such application until the decision and order in the matter of such statement of issues becomes final, and if the order in such matter is for the denial of the application for any such license, the certificate of convenience with respect thereto shall automatically terminate on the effective date of such denial.

(Added by Stats. 1959, Ch. 4.)

1747. When the commissioner may determine or have good cause to believe that any property broker-agent or casualty broker-agent has failed to keep or maintain the records required by Section 1727, in connection with or in lieu of any other disciplinary action against the license of the licensee, the commissioner may issue the commissioner's order requiring the licensee to establish and currently complete those records within 60 days from the date of the order. When the order is given in lieu of other disciplinary action, notice of the order may be given by certified mail addressed to the office of the licensee. Failure of the licensee to comply with the order within the time specified therein shall be grounds for the suspension or revocation of the license or licenses of the licensee, and the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2021, Ch. 133, Sec. 27. (SB 272) Effective July 23, 2021.)

1748. The commissioner, in any proceeding under the provisions of this article, may, by an alternative order, permit a licensee to elect in writing to pay a specified money penalty, within a specified time in lieu of a license suspension or other permitted action. If the licensee so elects, the sum of money specified shall be paid to the commissioner for the use of the State of California. The sum specified shall not exceed:

- (a) Four thousand dollars (\$4,000) for each offense.
- (b) Twenty thousand dollars (\$20,000) in the aggregate for all offenses involved in any one proceeding.
- (c) Thirty percent of the gross commissions on insurance transacted by the licensee in the preceding calendar year.
- (d) Any amount proven, or admitted, in the proceeding to have been received and retained by the licensee in violation of this code.

The commissioner shall determine the monetary penalty to be paid in any given case and in so doing shall not be limited to the selection of the penalty specified in any one of the above subdivisions, as compared with the penalty in any of the other three subdivisions, that will result in the payment by the licensee of the least amount.

The amount of reimbursement the commissioner orders shall be the amount that fully reimburses the commissioner for the commissioner's costs, or any lesser amount that the commissioner determines is the most the subject of the order can pay in the event the subject is financially unable to fully reimburse the commissioner.

If a licensee fails to pay a monetary penalty or reimbursement within the time specified in the order, the commissioner, unless the order is lawfully stayed, may deny a pending application for a license, or may revoke or suspend the license of the subject of the order for a period of time as determined by the commissioner. If, for any reason, an application is denied, or a license is revoked or suspended, before the subject of the order has paid the full amount of an ordered monetary penalty or reimbursement, the balance owed shall be paid before a license may be reinstated or an application for any new license may be granted.

(Amended by Stats. 1999, Ch. 782, Sec. 6. Effective January 1, 2000.)

1748.5. (a) For the purposes of this section, the following definitions are applicable:

- (1) "Production agency" means any person or organization licensed under Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).
- (2) "Subject person" means any person who has participated or may participate in any manner in the business of a production agency, or any person licensed as a producer.

(3) "Insurer" means any domestic insurer, and any insurer that is admitted to transact insurance in this state, provided that if a subject person of an insurer is not a resident of California, or operating out of a place of business within California, then the subject person shall be engaged in direct management, direction, or conduct of the business of insurance in California in order to come within the provisions of this section.

(b) If, after notice and a hearing, the commissioner finds all of the following, the commissioner may issue an order removing a subject person from the subject person's office or employment with the production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner:

(1) (A) The subject person has engaged in misconduct with respect to the business of insurance that has caused financial or other injury to any person, or

(B) The subject person has engaged in fraud, or willful acts or omissions involving dishonesty that exposed a person to financial or other injury; and

(2) The subject person's conduct or practice demonstrates unfitness to continue as a subject person.

(c) (1) If the commissioner gives written notice pursuant to subdivision (b) to a subject person, the commissioner shall immediately issue an order prohibiting the subject person from participating in any manner in the business of insurance, except with the prior consent of the commissioner, if the commissioner: (A) finds that failure to immediately issue the order threatens the financial solvency of an insurer or may reasonably be expected to cause irreparable injury to any person; (B) serves that subject person and the production agency with written notice of the suspension order; and (C) finds that all of the necessary factors are present which would permit the commissioner, after notice and a hearing, to issue an order pursuant to subdivision (b) removing a subject person from the subject person's office or employment with the production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency.

(2) Any suspension order issued pursuant to paragraph (1) of this subdivision shall be effective until the date the commissioner dismisses the charges contained in the notice served under subdivision (b) or paragraph (1) of this subdivision, the effective date of an order issued by the commissioner pursuant to subdivision (b), or a court issues a stay of the order pursuant to subdivision (d).

(d) Within 10 days after a subject person has been served with an order of suspension pursuant to subdivision (c), the person may apply to the superior court of the county in which the principal office of the production agency is located for a stay of the order pending completion of the proceedings pursuant to subdivision (b), and the court shall have jurisdiction to issue an order staying the suspension. Nothing in this subdivision shall be deemed to authorize the court to issue a stay order on an ex parte basis.

(e) (1) If the commissioner finds both of the following, the commissioner shall immediately issue an order suspending a subject person from the subject person's office or employment with a production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the subject person has been charged in an indictment issued by a grand jury, or in an information, complaint, or similar pleading issued by a United States Attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime punishable by imprisonment for a term exceeding one year and which involves as one of its necessary elements a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

In the event the criminal proceedings are terminated other than by judgment of conviction, an order issued pursuant to paragraph (1) of this subdivision shall be deemed rescinded as if it had not been issued.

(2) If the commissioner finds both of the following, the commissioner may immediately issue an order removing a subject person from the subject person's office or employment with a production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the person has during the preceding five years been convicted of a crime that is punishable by imprisonment for a term exceeding one year and has as one of its necessary elements a fraudulent act or an act of dishonesty in the accepting, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

(3) The fact that any subject person charged with a crime involving as one of its necessary elements a fraudulent act or any act of dishonesty in the acceptance, custody, or payment of money or property is not convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this code.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (c) or (e), the subject person to whom the order is issued may choose to do either of the following: (A) file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the subject person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business

days after the application is filed, or within a longer period of time to which the subject person consents, the order shall be deemed rescinded as if it had not been issued. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded as if it had not been issued, or (B) petition for judicial review of the order pursuant to Section 1085 of the Code of Civil Procedure, where the court shall exercise its independent judgment on the evidence.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (c) or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner for a hearing on the order as provided by this subdivision.

(g) (1) Any person to whom an order is issued pursuant to subdivision (b), (c), or (e) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner finds that it is reasonable to believe that the person will, if and when the person becomes a subject person, comply with all of the applicable provisions of this code and of any regulation or order issued thereunder.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner pursuant to paragraph (1).

(h) (1) It is unlawful for any subject person or former subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to do any of the following as long as the order is in effect, except with the prior consent of the commissioner: (A) to serve or act as a subject person for any insurer or production agency; or (B) to directly or indirectly vote any shares or other securities of an insurer or production agency.

(2) If, after notice and a hearing, the commissioner finds that any subject person has violated paragraph (1) of this subdivision, the commissioner may order that subject person to pay to the commissioner a civil penalty, which may be recovered in a civil action, in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each day for which the violation continues.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(3) If, after notice and a hearing, the commissioner finds that any production agency has knowingly aided and abetted a subject person in a violation of paragraph (1) of this subdivision, or subdivision (h) of Section 728, the commissioner may order that production agency to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues, up to a maximum of fifty thousand dollars (\$50,000). Continuation of the subject person's salary or other employee benefits pending final disposition shall not be considered aiding and abetting a subject person.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(i) Except as otherwise provided by this section, any hearing required by this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, subject to the following:

(1) At the option of the subject person, all hearings shall be a closed session and private, and the records of the hearings shall not be made public unless the hearing results in a final order adverse to the subject person.

(2) Where judicial review is sought by the subject person pursuant to Section 1085 of the Code of Civil Procedure, the court shall exercise its independent judgment upon the evidence.

(3) When a subject person to whom an order has been issued pursuant to subdivision (c) or (e) applies to the commissioner for a hearing pursuant to subparagraph (A) of paragraph (1) of subdivision (f), the Office of Administrative Hearings shall schedule the hearing on a priority basis at the earliest possible time and once the hearing is commenced, it shall not be continued for more than three business days without the consent of the subject person.

(4) If the Office of Administrative Hearings cannot schedule the commencement of a hearing within 15 business days as provided by paragraph (1) of subdivision (f), and the subject person does not waive the person's right to a hearing commencing within 15 days, the hearings may be conducted by administrative law judges appointed by the commissioner; the hearing shall be completed within 45 days of commencement, unless additional time is requested by the subject person. If the hearing is not completed within the 45 days, the order shall be deemed rescinded as if it had not been issued. The scheduling of other hearings before the administrative law judge shall not be considered good cause for purposes of this paragraph.

(j) Nothing in this section is intended to or shall be construed to create a private cause of action against an offending subject person or insurer or production agency that aids and abets a subject person, based on the standards established by this section or the

commissioner's findings or orders pursuant to this section.

(Amended by Stats. 2021, Ch. 133, Sec. 28. (SB 272) Effective July 23, 2021.)