

Notice of Proposed Rule

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Board of Professional Engineers

RULE NO.: RULE TITLE:

61G15-19.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances

PURPOSE AND EFFECT: The purpose of the amendment is to clarify the rule text.

SUMMARY: Update rule text.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 455.227, 455.2273, 471.008, 471.031, 471.033 FS.

LAW IMPLEMENTED: 455.227, 455.2273, 455.2277, 471.031, 471.033 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Zana Raybon, Executive Director, Board of Professional Engineers, 2639 North Monroe Street, Suite B-112, Tallahassee, FL 32303; (850)521-0500.

THE FULL TEXT OF THE PROPOSED RULE IS:

61G15-19.004 Disciplinary Guidelines; Range of Penalties; Aggravating and Mitigating Circumstances.

(1) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners (including qualified business organizations) guilty of violating Chapters 455 or 471, F.S., or the rules promulgated thereto. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of particular provisions of Chapters 455 or 471, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple counts of violations of the same provision of Chapters 455 or 471, F.S., or the rules promulgated thereto, or other unrelated violations contained in the same administrative complaint will be grounds for enhancement of penalties. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand which may be included in the final penalty at the Board's discretion. All impositions of probation as a penalty shall include successful completion of the Engineering Law and Rules Study Guide, completion of a Board-approved course in Engineering Professionalism and Ethics, and an appearance before the Board at the option of the Board at the end of the probationary period. Plans review requires payment of additional fees to the Board approved consultant. Unsatisfactory plans reviews may lead to the institution of additional disciplinary proceedings. Other terms may be imposed by the Board at its discretion.

(2) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules. For the purposes of this rule, the descriptions of the violations are abbreviated and the full statute or rule cited should be consulted to determine the prohibited conduct.

VIOLATION	PENALTY RANGE
-----------	---------------

	FIRST VIOLATION	SECOND AND SUBSEQUENT VIOLATIONS
(a) Violating any provision of Section 455.227(1), 471.025 or 471.031, F.S., or any other provision of chapter 471, F.S., or rule of the Board or Department. (Sections 471.033(1)(a) and 455.227(1)(b), (q), F.S.) <u>Not otherwise specifically enumerated below.</u>	Reprimand and \$1,000.00 fine, to One (1) year suspension, two (2) years probation and \$5,000 fine.	\$5,000.00 fine and One (1) year suspension followed by; two (2) years probation to and \$5,000.00 fine and to Revocation.
1. through 14. No change.		
(b) through (h) No change.		
(i) Practicing on a revoked, suspended, inactive or delinquent license, or through a business organization not properly qualified. (Sections 471.033(1)(i) and 471.031(1)(e), F.S.)		
1. through 4. No change.		
5. Business Organization not properly qualified.	Reprimand; \$500.00 fine to \$5,000.00 fine, and one (1) year suspension.	One (1) year suspension and \$5,000.00 fine to Revocation.
(j) through (m) No change.		

(3) The board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the board prior to the imposition of a final penalty. The fact that an Administrative Law Judge of the Division of Administrative Hearings may or may not have been aware of the below mentioned aggravating or mitigating circumstances prior to a recommendation of penalty in a Recommended Order shall not obviate the duty of the board to consider aggravating and mitigating circumstances brought to its attention prior to the issuance of a Final Order.

(a) Aggravating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the enhancement of a penalty beyond the maximum level of discipline in the guidelines shall include but not be limited to the following:

1. through 4. No change.
5. Refusal to accept responsibility for or to acknowledge the violation.
6. Degree of cooperation with disciplinary investigation.
7. Degree to which conduct departed from generally accepted professional standards of conduct.

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

1. through 5. No change.
6. Acceptance of responsibility for the violation and explanation of the facts and circumstances surrounding the occurrence.
7. Degree of cooperation with disciplinary investigation.
8. Degree to which conduct departed from generally accepted professional standards of conduct.

Rulemaking Authority 455.227, 455.2273, 471.008, 471.031, 471.033 FS. Law Implemented 455.227, 455.2273, 455.2277, 471.031, 471.033 FS. History—New 1-7-87, Formerly 21H-19.004, Amended 11-27-94, 5-22-01, 11-15-01, 5-20-02, 11-21-06, 2-21-10, 9-5-16, 12-29-19,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Professional Engineers

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Professional Engineers

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 8, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 15, 2020