

65-4a06. Licensure; denial, suspension or revocation; procedures license violation classes; penalties; fines. (a) When the secretary determines that a facility is in violation of any applicable law or rule and regulation relating to the operation or maintenance of such facility, the secretary, upon proper notice, may deny, suspend or revoke the license of such facility, or assess a monetary penalty after notice and an opportunity for hearing has been given to the licensee in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the secretary and the facility may enter into a stipulation which shall be binding upon the secretary and the facility entering into such stipulation, and the secretary may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by this section against the facility entering into such stipulation.

(c) The secretary may temporarily suspend or temporarily limit the license of any facility in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the secretary determines that there is cause to believe that grounds exist under this section for immediate action authorized by this section against the facility and that the facility's continuation in operation would constitute an imminent danger to the public health and safety.

(d) Violations of K.S.A. 2014 Supp. 65-4a01 through 65-4a12, and amendments thereto, or of any rules and regulations adopted thereunder shall be deemed one of the following:

(1) Class I violations are those that the secretary determines to present an imminent danger to the health, safety or welfare of the patients of the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the secretary, is required for correction. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(2) Class II violations are those, other than class I violations, that the secretary determines to have a direct or immediate relationship to the health, safety or welfare of the facility's patients. The citation of a class II violation shall specify the time within which the violation is required to be corrected. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(3) Class III violations are those that are not classified as class I or II, or those that are against the best practices as interpreted by the secretary. The citation of a class III violation shall specify the time within which the violation is required to be corrected. Each day such violation shall exist after expiration of such time shall be considered a subsequent violation.

(e) The secretary shall consider the following factors when determining the severity of a violation:

- (1) Specific conditions and their impact or potential impact on the health, safety or welfare of the facility's patients;
- (2) efforts by the facility to correct the violation;
- (3) overall conditions of the facility;
- (4) the facility's history of compliance; and
- (5) any other pertinent conditions that may be applicable.

(f) Any monetary penalty assessed by the secretary shall be assessed in accordance with the following fine schedule:

(1) For class I violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

- (A) One violation, a fine of not less than \$200 and not more than \$1,000;
- (B) two violations, a fine of not less than \$500 and not more than \$2,000;
- (C) three violations, a fine of not less than \$1,000 and not more than \$5,000; and
- (D) four or more violations, a fine of \$5,000;

(2) for class II violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

- (A) One violation, a fine of not less than \$100 and not more than \$200;
- (B) two violations, a fine of not less than \$200 and not more than \$1,000;
- (C) three violations, a fine of not less than \$500 and not more than \$2,000;
- (D) four violations, a fine of not less than \$1,000 and not more than \$5,000; and
- (E) five or more violations, a fine of \$5,000;

(3) for class III violations the following number of violations within a 24-month period shall result in the corresponding fine amount:

- (A) One violation, there shall be no fine;
- (B) two violations, a fine of not less than \$100 and not more than \$500;
- (C) three violations, a fine of not less than \$200 and not more than \$1,000;
- (D) four violations, a fine of not less than \$500 and not more than \$2,000;
- (E) five violations, a fine of not less than \$1,000 and not more than \$5,000; and
- (F) six or more violations, a fine of \$5,000.

History: L. 2011, ch. 82, § 6; July 1.