

RCW 70.230.070 Denial, suspension, or revocation of license—

Investigating complaints—Penalties. (1) The department is authorized to take any of the actions identified in this section against an ambulatory surgical facility's license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter.

(a) When the department determines the ambulatory surgical facility has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the ambulatory surgical facility failed to correct noncompliance with a statute or rule by a date established or agreed to by the department, the department may impose reasonable conditions on a license. Conditions may include correction within a specified amount of time, training, or hiring a department-approved consultant if the ambulatory surgical facility cannot demonstrate to the department that it has access to sufficient internal expertise.

(b) (i) In accordance with the authority the department has under RCW 43.70.095, the department may assess a civil fine of up to \$7,500 per violation on an ambulatory surgical facility licensed under this chapter when the department determines the ambulatory surgical facility has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the ambulatory surgical facility failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(ii) Proceeds from these fines may only be used by the department to offset costs associated with licensing and enforcement of ambulatory surgical facilities.

(iii) If a licensee is aggrieved by the department's action of assessing civil fines, the licensee has the right to appeal under RCW 43.70.095.

(iv) The department shall adopt in rules under this chapter specific fine amounts in relation to:

(A) The severity of the noncompliance and at an adequate level to be a deterrent to future noncompliance; and

(B) The number of surgical procedures performed by an ambulatory surgical facility on an annual basis as identified by the facility at the time of licensure or renewal in the following categories:

(I) Performs 1,000 or fewer surgical procedures;

(II) Performs between 1,001 and 5,000 surgical procedures; and

(III) Performs more than 5,000 surgical procedures.

(c) The department may suspend a specific category or categories of services or care or operating rooms or recovery rooms within the ambulatory surgical facility as related to the violation by imposing a limited stop service. This may only be done if the department finds that noncompliance results in immediate jeopardy.

(i) Prior to imposing a limited stop service, the department shall provide an ambulatory surgical facility written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy. The ambulatory surgical facility shall have 24 hours from notification to develop and implement a department-approved

plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practices or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same 24-hour period, the department may issue the limited stop service.

(ii) When the department imposes a limited stop service, the ambulatory surgical facility may not provide the services in the category or categories subject to the limited stop service to any new or existing individuals, unless otherwise allowed by the department, until the limited stop service is terminated.

(iii) The department shall conduct a follow-up inspection within five business days or within the time period requested by the ambulatory surgical facility if more than five business days is needed to verify the violation necessitating the limited stop service has been corrected.

(iv) The limited stop service shall be terminated when:

(A) The department verifies the violation necessitating the limited stop service has been corrected or the department determines that the ambulatory surgical facility has taken intermediate action to address the immediate jeopardy; and

(B) The ambulatory surgical facility establishes the ability to maintain correction of the violation previously found deficient.

(d) The department may suspend new admissions to the ambulatory surgical facility by imposing a stop placement. This may only be done if the department finds that noncompliance results in immediate jeopardy and is not confined to a specific category or categories of patients or a specific area of the ambulatory surgical facility.

(i) Prior to imposing a stop placement, the department shall provide an ambulatory surgical facility written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy. The ambulatory surgical facility shall have 24 hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practices or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same 24-hour period, the department may issue the stop placement.

(ii) When the department imposes a stop placement, the ambulatory surgical facility may not admit any new patients until the stop placement is terminated.

(iii) The department shall conduct a follow-up inspection within five business days or within the time period requested by the ambulatory surgical facility if more than five business days is needed to verify the violation necessitating the stop placement has been corrected.

(iv) The stop placement shall be terminated when:

(A) The department verifies the violation necessitating the stop placement has been corrected or the department determines that the ambulatory surgical facility has taken intermediate action to address the immediate jeopardy; and

(B) The ambulatory surgical facility establishes the ability to maintain correction of the violation previously found deficient.

(e) The department may deny an application for a license or suspend, revoke, or refuse to renew a license.

(2) The secretary may deny, suspend, or revoke the license of any ambulatory surgical facility in any case in which he or she finds the applicant or registered entity knowingly made a false statement of

material fact in the application for the license or any supporting data in any record required by this chapter or matter under investigation by the department.

(3) Except as otherwise provided, RCW 43.70.115 governs notice of actions taken by the department under this section and provides the right to an adjudicative proceeding. Adjudicative proceedings and hearings under this section are governed by the administrative procedure act, chapter 34.05 RCW. The application for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the department's notice, be served on and received by the department within 28 days of the licensee's receipt of the adverse notice, and be served in a manner that shows proof of receipt.

(a) When the department determines a licensee's noncompliance results in immediate jeopardy, the department may make the imposition of conditions on a licensee, a limited stop service, stop placement, or the suspension of a license effective immediately upon receipt of the notice by the licensee, pending any adjudicative proceeding.

(b) When the department makes the suspension of a license or imposition of conditions on a license effective immediately, a licensee is entitled to a show cause hearing before a presiding officer within 14 days of making the request. The licensee must request the show cause hearing within 28 days of receipt of the notice of immediate suspension or immediate imposition of conditions. At the show cause hearing the department has the burden of demonstrating that more probably than not there is an immediate jeopardy.

(c) At the show cause hearing, the presiding officer may consider the notice and documents supporting the immediate suspension or immediate imposition of conditions and the licensee's response and shall provide the parties with an opportunity to provide documentary evidence and written testimony, and to be represented by counsel. Prior to the show cause hearing, the department shall provide the licensee with all documentation that supports the department's immediate suspension or imposition of conditions.

(d) If the presiding officer determines there is no immediate jeopardy, the presiding officer may overturn the immediate suspension or immediate imposition of conditions.

(e) If the presiding officer determines there is immediate jeopardy, the immediate suspension or immediate imposition of conditions shall remain in effect pending a full hearing.

(f) If the presiding officer sustains the immediate suspension or immediate imposition of conditions, the licensee may request an expedited full hearing on the merits of the department's action. A full hearing must be provided within 90 days of the licensee's request.

(4) When the department determines an alleged violation, if true, would constitute an immediate jeopardy, and the licensee fails to cooperate with the department's investigation of such an alleged violation, the department may impose an immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension.

(a) When the department imposes an immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension for failure to cooperate, a licensee is entitled to a show cause hearing before a presiding officer within 14 days of making the request. The licensee must request the show cause hearing within 28 days of receipt of the notice of an immediate stop

placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension for failure to cooperate.

(b) At the show cause hearing the department has the burden of demonstrating that more probably than not the alleged violation, if true, would constitute an immediate jeopardy and the licensee failed to cooperate with the department's investigation.

(c) At the show cause hearing, the presiding officer may consider the notice and documents supporting the immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension for failure to cooperate, and the licensee's response and shall provide the parties with an opportunity to provide documentary evidence and written testimony, and to be represented by counsel. Prior to the show cause hearing, the department shall provide the licensee with all documentation that supports the department's immediate action for failure to cooperate.

(d) If the presiding officer determines the alleged violation, if true, does not constitute an immediate jeopardy or determines that the licensee cooperated with the department's investigation, the presiding officer may overturn the immediate action for failure to cooperate.

(e) If the presiding officer determines the allegation, if true, would constitute an immediate jeopardy and the licensee failed to cooperate with the department's investigation, the immediate action for failure to cooperate shall remain in effect pending a full hearing.

(f) If the presiding officer sustains the immediate action for failure to cooperate, the licensee may request an expedited full hearing on the merits of the department's action. A full hearing must be provided within 90 days of the licensee's request. [2024 c 121 s 16; 2007 c 273 s 8.]