

WAC 246-282-104 Penalty assignment—Calculation of penalty and proportionate adjustment—Aggravating and mitigating factors. (1) The department calculates an appropriate penalty based on the following factors:

- (a) The level of threat to public health;
- (b) The number of previous violations attributed to the violator;

and

- (c) The presence of aggravating or mitigating factors.

(2) The department determines administrative penalties from the range in the following penalty schedule. The standard penalty is assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.

Penalty Schedule

NUMBER OF PREVIOUS VIOLATIONS	ADJUSTMENT FACTORS	PUBLIC HEALTH THREAT		
		LOW License Action/ Civil Penalty	INTERMEDIATE License Action/ Civil Penalty	HIGH License Action/ Civil Penalty
0	Mitigated	0 Months/\$150	0 Months/\$300	3 Months/\$350
	Standard	0 Months/\$200	1 Month/\$350	6 Months/\$400
	Aggravated	1 Month/\$250	3 Months/\$400	9 Months/\$450
1	Mitigated	0 Months/\$200	1 Month/\$350	6 Months/\$400
	Standard	0 Months/\$250	3 Months/\$400	9 Months/\$450
	Aggravated	3 Months/\$300	6 Months/\$450	12 Months/\$500
2	Mitigated	0 Months/\$250	3 Months/\$400	12 Months/\$500
	Standard	3 Months/\$300	6 Months/\$450	18 Months/\$500
	Aggravated	6 Months/\$350	9 Months/\$500	24 Months/\$500
3 or More	Mitigated	3 Months/\$300	6 Months/\$450	18 Months/\$500
	Standard	6 Months/\$350	9 Months/\$500	24 Months/\$500
	Aggravated	9 Months/\$400	12 Months/\$500	36 Months/\$500

(3) The department reserves the right to proportionately increase the civil penalty and decrease the license action under certain circumstances. These circumstances include situations where license actions as a deterrent are ineffective and include, but are not limited to, violations by persons who are not licensed.

(4) The department reserves the right to proportionately decrease the civil penalty and increase the license action when circumstances in a particular case demonstrate the ineffectiveness of a civil penalty as a deterrent.

(5) (a) When assessing a civil penalty or license action, the department considers any previous violation(s) for the following period of time, depending on the severity of the previous violation(s):

- (i) Three years for low public health threat;
- (ii) Five years for intermediate public health threat; or
- (iii) No limit for high public health threat.

(b) The time period will begin on the date of adjudication or settlement of the previous violation(s), rather than the date on which the incident or conduct occurred.

(6) The department considers circumstances that increase the seriousness of a violation, including, but not limited to, the following aggravating factors:

- (a) The extent to which the violation is part of a pattern of the same or substantially similar conduct;

(b) The extent to which previous education, technical assistance, or notice of correction has been provided for the same or substantially similar conduct; and

(c) The extent to which the violation caused serious and actual injury or death to a person or persons.

(7) If the department determines that one or more aggravating factors are present, then the department may assess the aggravated penalty or may increase the penalty to a level greater than listed in the penalty schedule, including, but not limited to, revocation of the license.

(8) The department will consider circumstances that decrease the seriousness of a violation, including, but not limited to, the following mitigating factors:

(a) Voluntary disclosure of the violation;

(b) Complete cooperation and voluntary disclosure during the investigation of the violation; and

(c) Voluntary taking of remedial measures that will result in increased public health protection and that will result in a decreased likelihood that the violation will be repeated and that other violations will occur.

(9) If the department determines that one or more mitigating factors are present, then the department may assess the mitigated penalty or may decrease the penalty to a level less than listed in the penalty schedule.

(10) The maximum civil penalty that may be imposed by the department is five hundred dollars per day for each violation.

(11) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and distinct violation. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(12) Nothing in this section prevents the department from responding to a violation by:

(a) Declining to pursue an administrative penalty;

(b) Issuing a notice of correction instead of pursuing an administrative penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

[Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-104, filed 2/5/01, effective 3/8/01.]