**90-351 WORKERS' COMPENSATION BOARD**

**Chapter 15: PENALTIES**

This chapter sets forth the delegation of authority to assess penalties under Title 39-A and specifies the procedures for assessing penalties.

**§ 1. Place of Filing**

 Unless otherwise directed, all filings, responses to filings, position papers and correspondence relating to penalties and forfeitures under this chapter must be addressed to and filed with the Abuse Investigation Unit, Maine Workers’ Compensation Board, 27 State House Station, Augusta, Maine, 04333-0027.

**§ 2.** *[Reserved]*

**§ 3. Assessment of Penalties under 39-A M.R.S.A. §205**

 1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Executive Director or the Executive Director’s designee the authority to assess penalties pursuant to §§ 205(3) and 205(4). Complaints under §205(3) may be filed by the Deputy Director of Benefits Administration or other interested party. Any interested party may file a complaint pursuant to §205(4).

 2. For complaints involving §205(3), the Abuse Investigation Unit will obtain documentation of payments made pursuant to §§ 205(1) and 205(2). Parties will be given the opportunity to address, in writing, any issues regarding factual disputes prior to the imposition of a penalty.

 3. After completion of the investigation, if it is determined that a violation has occurred, the Executive Director or the Executive Director’s designee will issue an order assessing penalties as outlined in §205(3). The order will specify the factual findings upon which the penalty is based.

 4. For complaints involving §205(4), the complaint must specify that there is no ongoing dispute regarding the claim for benefits and must include proof of service upon the insurance carrier, by certified mail, of notice of nonpayment of the medical bill in question. Parties will be given the opportunity to address, in writing, any issues regarding factual disputes prior to the imposition of a penalty.

 5. After completion of the investigation, if it is determined that a violation has occurred, the Executive Director or the Executive Director’s designee will issue an order assessing penalties as outlined in §205(4). The order will specify the factual findings upon which the penalty is based.

**§ 4.** *[Reserved]*

**§ 5. Assessment of Sanctions and Forfeitures under 39-A M.R.S.A. §313**

 1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Executive Director or the Executive Director’s designee the authority to assess sanctions and forfeitures pursuant to §313.

 2. The mediators will refer all recommendations for sanctions and forfeitures under §313 to the Executive Director or the Executive Director’s designee. Referrals for sanctions and forfeitures must be in writing, must state the grounds for the referral, including the factual basis on which the referral is made, and must be served upon the party against whom the sanction or forfeiture is sought by certified mail, return receipt requested.

 3. The Executive Director or the Executive Director’s designee will process all requests for penalties under §313(5) and is empowered to assess a forfeiture of $100 against any employer or representative of the employee, employer, or insurer for failure to be familiar with the claim or have full authority to make decisions regarding the claim. The Assistant Director is also empowered to impose a sanction against any party of up to $100 under §313(4) for failure to attend a scheduled mediation.

 4. All other §313(4) sanctions and any other forfeiture or sanction referral not falling within these prescribed categories will be referred for action by the Executive Director or the Executive Director’s designee.

 5. The Executive Director or the Executive Director’s designee is empowered to impose sanctions under §313(4) which include assessment of costs and attorney’s fees; reductions in attorney’s fees; or suspension of proceedings until the moving party cooperates or produces the requested material. Where the facts warrant it, a hearing will be held prior to imposition of sanctions under §313(4).

 6. Sanctions and forfeitures under both §§ 313(4) and 313(5) will be imposed by written order. The order will specify the factual findings upon which the forfeiture or sanction is based.

**§ 6. Assessment of Forfeitures under 39-A M.R.S.A. §324(2)**

 1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Executive Director or the Executive Director’s designee the authority to assess forfeitures pursuant to §324(2).

 2. **Procedures for Assessment of Forfeitures**

 A. Any party in interest may file a Petition for Forfeiture with the Abuse Investigation Unit pursuant to 39-A M.R.S.A. §324(2)(A). A copy of the petition must be served by certified mail, return receipt requested, to the other parties named in the petition. A copy of the petition must be served upon the employer, employers’ insurer, or group self-insurer.

 B. No response to a petition filed under subsection A is required. It will be presumed by the Abuse Investigation Unit that all allegations are denied.

 C. The Abuse Investigation Unit will investigate the allegations contained in the Petition for Forfeiture. As part of its investigation, the Abuse Investigation Unit shall require any and all interested parties to submit written evidence concerning the petition, including but not limited to position papers, depositions, and affidavits. The Abuse Investigation Unit will set forth a schedule for the submission of such evidence by the parties. Absent extraordinary circumstances, no testimonial hearing will be held.

 D. The moving party’s failure to file requested documentation by the date specified by the Abuse Investigation Unit or to request and receive an extension in a timely fashion, shall result in the dismissal of the petition. Failure by the defending party to file requested documentation by the date specified, or to request and receive an extension in a timely fashion, shall result in the allegations submitted in the petition being accepted as true and a forfeiture being assessed based on these accepted facts. Absent extraordinary circumstances, no more than one extension of time will be granted.

 E. Voluntary dismissal of a Petition for Forfeiture at the moving party’s request or by settlement agreement will not preclude the Abuse Investigation Unit from recommending the assessment of a forfeiture payable to the Workers’ Compensation Board Administrative Fund pursuant to §324(2)(A)(1).

 F. Upon completion of its investigation, the Abuse Investigation Unit will provide the Executive Director or the Executive Director’s designee with a recommended disposition of the case, which may include a suggested forfeiture amount. The Executive Director or the Executive Director’s designee will review the recommendation as well as the parties’ contentions and will issue an order either granting, denying or dismissing the petition.

 G. Orders assessing forfeitures will be based upon the results of the investigation and the written submissions of the parties. For purposes of determining whether a forfeiture will be assessed, circumstances beyond a party’s control normally will not include turnovers in staff or problems with data processing systems which are of a short duration. In determining the amount of an assessed forfeiture, consideration will be given to prior forfeiture orders issued against the same party for similar offenses.

 H. If a petition is granted, the employer or insurance carrier shall pay reasonable costs and attorney’s fees related to the fine as determined by the Executive Director or the Executive Director’s designee.

**§ 7. Assessment of Penalties under 39-A M.R.S.A. §324(3)**

 1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Workers’ Compensation Board Abuse Investigation Unit the authority to recommend the imposition of penalties pursuant to §324(3) and delegates to the Executive Director or the Executive Director’s designee the authority to assess civil penalties, after hearing, pursuant to §324(3).

 2. The Deputy Director of Benefits Administration will report all instances of noncompliance with §§ 401 and 403 of the Act to the Abuse Investigation Unit, which will investigate the report of noncompliance.

 3. Upon completion of the investigation, the Abuse Investigation Unit may refer the matter to the Executive Director or the Executive Director’s designee for hearing and will notify the subject of the investigation of the referral. Hearings will be held in accordance with the provisions of Section 10.4 of these rules.

 4. In addition to referral to the Executive Director or the Executive Director’s designee for hearing, the Abuse Investigation Unit may pursue any of the sanctions contained in §324(3) where appropriate.

**§ 8. Assessment of Penalties under 39-A M.R.S.A. §359(2)**

1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Workers’ Compensation Board Abuse Investigation Unit the authority to recommend the imposition of penalties pursuant to §359(2). The Board designates the Executive Director, or the Executive Director’s designee, to be the Presiding Officer for hearings conducted pursuant to this rule. The Presiding Officer shall have the authority to assess civil penalties, after hearing, pursuant to §359(2).

2. Any party in interest may file a §359(2) complaint with the Abuse Investigation Unit. The Abuse Investigation Unit may also initiate action, either on its own, or on referral from the Monitoring, Audit, and Enforcement (MAE) Program. The Abuse Investigation Unit will investigate all complaints and, as part of the investigation, may require the parties to submit written evidence concerning the complaint or complaints, including position papers.

3. Upon completion of the investigation, the Abuse Investigation Unit will determine whether the allegations, if true, demonstrate that an employer, insurer, or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated, unreasonably-contested claims. For purposes of this rule, a claim is unreasonably contested if there is no articulable basis for contesting the claim, or the claim is contested upon a basis that is contrary to law or rule.

4. If so, the subject of the investigation will be notified that the matter is being referred for hearing and possible imposition of civil penalties. If not, further investigation under §359(2) will be denied.

5. The Presiding Officer will schedule and hold a hearing in referred cases. The Presiding Officer will issue a hearing order to the parties concerning the procedure to be followed before and during the hearing, including the submission of additional evidence and the filing of motions. In cases where a party is alleging that an employer, insurer, or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated, unreasonably-contested claims, the burden will be upon the complaining party to prove its contentions. In cases where there is no specific complaining party, the Abuse Investigation Unit will present evidence acquired during, or as a result of the investigation. In all cases, the Presiding Officer will actively participate to ensure that all relevant information is considered prior to issuing findings. If necessary, the Presiding Officer may request further investigation by the Abuse Investigation Unit if circumstances warrant.

6. To prevail, the moving party must show by a preponderance of the evidence that an employer, insurer, or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated, unreasonably-contested claims.

7. In cases where there is a finding that an employer, insurer, or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated, unreasonably-contested claims, the Presiding Officer, in determining the amount of penalty to be assessed, shall consider the severity of the offense, and any previous adverse determinations under §359(2) against the employer, insurer, or 3rd-party administrator for an employer.

8. All findings and conclusions shall issue in a written order. Decisions rendered by the Presiding Officer shall be appealable to the Law Court as provided in 39-A M.R.S.A. §322.

9. All decisions rendered by the Presiding Officer shall be presented to the Board. The Board shall certify its findings to the Superintendent of Insurance. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act.

**§ 9. Assessment of Penalties under 39-A M.R.S.A. §360(1)**

 1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Executive Director or the Executive Director’s designee the authority to assess penalties pursuant to §360(1).

 2. Any party in interest, including the Deputy Director of Benefits Administration or other interested party, may file a complaint under §360(1) with the Abuse Investigation Unit. The complaint must be in writing, must state the grounds for assessment of the penalty, including the factual basis on which the complaint is based, and must be served upon the party against whom the penalty is sought.

 3. The party against whom the penalty is sought may respond to the complaint within 10 days of receipt of the complaint. Responses should be limited to addressing the factual issues invoked, and may include relevant exhibits.

 4. After review of the submissions and the results of any investigation, the Executive Director or the Executive Director’s designee will issue an order either assessing a penalty or dismissing the complaint.

**§ 10. Assessment of Penalties under 39-A M.R.S.A. §360(2)**

 1. Pursuant to 39-A M.R.S.A. §152(7), the Maine Workers’ Compensation Board delegates to the Workers’ Compensation Board Abuse Investigation Unit the authority to recommend the imposition of penalties pursuant to §360(2) and delegates to the Executive Director, or the Executive Director’s designee, the authority to be the Presiding Officer for hearings conducted pursuant to this rule. The Presiding Officer shall have the authority to assess civil penalties, after hearing, pursuant to §360(2).

 2. Any party in interest, including any deputy director or assistant director of the Workers’ Compensation Board, may file a §360(2) complaint with the Abuse Investigation Unit. The Abuse Investigation Unit will investigate all complaints and, as part of the investigation, may require parties to submit written evidence concerning the complaint, including position papers.

 3. Upon completion of the investigation, the Abuse Investigation Unit will determine whether the allegations, if true, rise to the level of willful violation, fraud, or intentional misrepresentation. If so, the subject of the investigation will be notified that the matter is being referred for hearing and possible imposition of civil penalties. If not, further investigation under §360(2) will be denied.

 4. The Presiding Officer will schedule and hold a hearing in referred cases. The Presiding Officer will issue a hearing order to the parties concerning the procedure to be followed before and during the hearing, including the submission of additional evidence and the filing of motions. In cases where there are opposing parties, the burden will be upon the complaining party to prove its contentions; however, the Presiding Officer will actively participate to ensure that all relevant information is considered prior to issuing findings. In cases where there is no specific complaining party, the Abuse Investigation Unit will present evidence acquired during, or as a result of the investigation. If necessary, the Presiding Officer may request further investigation by the Abuse Investigation Unit in a case of circumstances warrant it.

 5. The standard for determining whether a willful violation of the Act or intentional misrepresentation has occurred is by preponderance of the evidence. In the case of fraud, the standard is one of clear and convincing evidence.

 6. In determining whether to assess a penalty or the amount to be assessed, the Presiding Officer will consider the severity of the offense, whether it is a repeated offense, and the amount of money at issue. The lack of a prior offense will not be a mitigating factor in determining the amount of the penalty assessed. Penalty amounts are limited to 50% of the monies at issue up to the statutory cap.

 7. In considering whether to order the repayment of benefits wrongfully received, the Presiding Officer will consider the severity of the offense and will accept and consider evidence of financial ability to repay.

8. All findings and conclusions will issue in a written order. This order will constitute final agency action which is appealable in Superior Court.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

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EFFECTIVE DATE:

 October 29, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

 April 28, 1996

NON-SUBSTANTIVE CORRECTIONS:

 September 12, 1996 -- header added, “Sec.” changed to §, minor spelling and formatting

AMENDED:

 May 23, 1999 - Section 8 added, § reverted to Sec.

NON-SUBSTANTIVE CORRECTIONS:

 October 26, 1999 - minor punctuation and formatting

AMENDED:

 October 25, 2000 - Amendments to Sections 5, 7, & 10 (DDDR references changed)

NON-SUBSTANTIVE CHANGES:

 January 9, 2003 - character spacing only

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 September 30, 2007 – Amendments to Sections 3, 6, &9 (Executive Director designee), filing 2007-418

REPEALED AND REPLACED:

 August 18, 2014 – filing 2014-181

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