

Colorado Revised Statutes



24-4-104. Licenses – issuance, suspension or revocation, renewal.

****Update notice:** This section has been amended by

[CHAPTER 428, COLO. SESS. LAWS OF 2007.](#)

(1) In any case in which application is made for a license required by law, the agency, with due regard for the rights and privileges of all interested persons, shall set and conduct the proceedings in accordance with this article unless otherwise required by law.

(2) Every agency decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license shall be based solely upon the stated criteria, terms, and purposes of the statute, or regulations promulgated thereunder, and case law interpreting such statutes and regulations pursuant to which the license is issued or required. Terms, conditions, or requirements limiting any license shall be valid only if reasonably necessary to effectuate the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

(3)(a) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of objective facts or conduct established upon a full investigation that may warrant such action and afforded the licensee opportunity to submit written data, views, and arguments with respect to the facts or conduct and, except in cases of deliberate and willful violation or of substantial danger to public health and safety, given the licensee a reasonable opportunity to comply with all lawful requirements. For purposes of this subsection (3), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (3) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 12, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(4)(a) Where the agency has objective and reasonable grounds to believe and finds, upon a full investigation, that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection (4), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (4) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 12, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(5) A proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced by the agency upon its own motion or by the filing with the agency of a written complaint, signed and sworn to by the complainant, stating the name of the licensee complained against and the grounds for the requested action.

(6) No previously issued license shall be revoked, suspended, annulled, limited, or modified, except as provided in subsection (3) of this section, until after hearing as provided in section [24-4-105](#).

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a denial. The licensee, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section [24-4-105](#), and the action of the agency after any hearing shall be subject to judicial review as provided in section [24-4-106](#).

(8) An application for a license shall be acted upon promptly, and, immediately after the taking of action on such application by an agency, a written notice of the action taken by the agency and, if the application is denied, the grounds therefor shall be given to the applicant. The giving of such notice shall be by personal service upon the applicant or by mailing the same to the address of the applicant as shown on the application or as subsequently furnished in writing by the applicant to the agency.

(9) If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section [24-4-105](#), and the action of the agency after any hearing shall be subject to judicial review as provided in section [24-4-106](#).

(10) Written notice of the revocation, suspension, annulment, limitation, or modification of a license and the grounds therefor shall be served forthwith on the licensee personally or by mailing by first-class mail to the last address furnished the agency by the licensee.

(11) A limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial. A modification, unless consented to by the licensee, of a license already issued shall be treated as a revocation.

(12) In an appropriate case a revoked or suspended license may be reissued.

(13)(a) Any applicant who, under oath, supplies false information to an agency in an application for a license commits perjury in the second degree, as defined in section [18-8-503](#), C.R.S. Any such application shall bear notice, in accordance with section [18-8-501](#)(2)(a)(I), C.R.S., that false statements made therein are punishable.

(b) On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary.

Source: L. 59: p. 161, § 3. **CRS 53:** § 3-16-3. **C.R.S. 1963:** § 3-16-3. **L. 69:** p. 84, § 4. **L. 81:** (2) amended, p. 1141, § 1, effective April 16. **L. 83:** (13) added, p. 521, § 4, effective March 15. **L. 93:** (3) and (7) amended, p. 1327, § 3, effective June 6. **L. 2006:** (3) and (4) amended, p. 838, § 1, effective August 7.

Editor's note: Section 2 of chapter [189](#), Session Laws of Colorado 2006, provides that the act amending subsections (3) and (4) applies to the amendment of licenses on or after August 7, 2006. The act was passed without a safety clause. For an explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Am.Jur.2d. See 2 Am.Jur.2d, Administrative Law, §§ 249, 250.

C.J.S. See 73 C.J.S., Public Administrative Law and Procedure, § 138.

Law reviews. For article, "A Critical Evaluation of the Federal Role in Nursing Home Quality Enforcement", see 51 U. Colo. L. Rev. 607 (1980). For article, "Law and Strategy in Licensing Disciplinary Proceedings", see 18 Colo. Law. 647 (1988). For article, "Alternative Dispute Resolution Meets the Administrative Process", see 24 Colo. Law. 1549 (1995). For article, "Right to Cure: The 'One Bite Rule' Is Alive and Well", see 27 Colo. Law. 27 (April 1998).

This section provides an independent right to a hearing in only two areas: Rule-making and licensure. *Bazemore v. Colo. State Lottery Div.*, [64 P.3d 876](#) (Colo.App. 2002).

Colorado statutory scheme makes adequate provisions for prompt hearing and determination of emergency summary license suspensions to meet due process requirements. Any vagueness in the term "promptly" is adequately cured by licensee's statutory right to request and obtain an "immediate" hearing following an emergency suspension. *Motor Vehicle Div. v. Castro*, [914 P.2d 517](#) (Colo.App. 1996).

Section applicable to suspension of medical license. Subsection (4) is the authority for the state board of medical examiners to summarily suspend a license to practice medicine pending a full hearing; § [12-36-101](#) et seq., dealing with medical practice, and § [24-4-103](#), dealing with rule-making procedure, do not apply. *Bd. of Med. Exam'rs v. District Court*, [191 Colo. 158](#), [551 P.2d 194](#) (1976).

And to suspension of fireworks licenses by the secretary of state. *Sanchez v. State*, [730 P.2d 328](#) (Colo. 1986).

Section not applicable to board of accountancy. The notice and hearing requirements of subsection (3) are of no significance where there is a specific statutory provision concerning the notice and hearing requirements in proceedings before the board of accountancy. *People ex rel. Bd. of Accountancy v. McFarland*, [37 Colo. App. 93](#), [543 P.2d 112](#) (1975).

Nor to liquor license suspension proceedings. The provisions of § 12-47-110, not the state administrative procedure act, do not apply to liquor license suspension proceedings. *Continental Liquor Co. v. Kalbin*, [43 Colo. App. 438](#), [608 P.2d 353](#) (1977); *Chroma Corp. v. Campbell*,

[44 Colo. App. 387](#), [619 P.2d 74](#) (1980).

Nor to the director of the department of revenue's discretionary decision. Because § [39-26-111](#) makes the authority of the director of the department of revenue to withdraw permission to make returns and pay taxes on the cash basis discretionary, that specific provision controls over the general provisions of this section and § [24-4-105](#) regarding notice and a hearing upon revocation of a license. *Montgomery Ward & Co. v. Dept. of Rev.*, [628 P.2d 85](#) (Colo. 1981).

Suspension or revocation hearing is a disciplinary proceeding. An administrative hearing to revoke or suspend a professional license is a disciplinary, not a criminal, proceeding. *Commerce City Drug v. Bd. of Pharmacy*, [32 Colo. App. 216](#), [511 P.2d 935](#) (1973).

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested income tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm'n*, [890 P.2d 173](#) (Colo.App. 1994).

When there is a conflict between provisions of the Administrative Procedure Act (APA) and a specific statutory provision relating to a specific agency, the specific statutory provision is deemed controlling in professional disciplinary proceedings before the board of medical examiners. *State Bd. of Med. Exam'rs v. Reiner*, [786 P.2d 499](#) (Colo.App. 1989).

Board of chiropractic examiners only has authority to suspend a license summarily in situations involving an emergency, despite the APA's provision allowing summary suspension for either a deliberate or willful violation or an emergency situation, since the more specific statutory provision relating to a particular agency controls. *Stjernholm v. Bd. of Chiropractic Exam'rs*, [865 P.2d 853](#) (Colo.App. 1993).

Agency that is given authority to suspend and revoke licenses pursuant to this section is given qualified authority to revoke licenses and not absolute authority. *Sanchez v. State*, [730 P.2d 328](#) (Colo. 1986).

Agency has no authority to revoke a license unless the licensee is first given a reasonable opportunity to correct such conduct that would justify the revocation of the license, except when it has been determined to have been deliberate and wilful. *Sanchez v. State*, [730 P.2d 328](#) (Colo. 1986); *Colo. Motor Vehicle Dealer Bd. v. Butterfield*, [9 P.3d 1148](#) (Colo.App. 2000).

A finding that the charges alleged in the notice, which involved fraudulent conduct, had been proven necessarily implied that the respondent acted willfully and deliberately, and thus there was no requirement for a pre-hearing opportunity for compliance. *Colo. Motor Vehicle Dealer Bd. v.*

Butterfield, [9 P.3d 1148](#) (Colo.App. 2000).

Exhaustion of administrative remedies is not required prior to judicial review when the agency fails to trigger appropriate procedures by issuing the notice required by subsection (3). Golden's Concrete Co. v. State, [937 P.2d 789](#) (Colo.App. 1996), rev'd on other grounds, [962 P.2d 919](#) (Colo. 1998).

Exhaustion doctrine explained. The principal policies underlying the exhaustion doctrine are to prevent premature interference with agency processes; to afford the parties and the courts the benefit of the agency's experience and expertise; and to compile a record that is adequate for judicial review. Golden's Concrete Co. v. State, [937 P.2d 789](#) (Colo.App. 1996), rev'd on other grounds, [962 P.2d 919](#) (Colo. 1998).

Exceptions to exhaustion doctrine include situations where only pure questions of law are presented, hence the agency's expertise is of no particular value, and where further administrative proceedings would be futile. Golden's Concrete Co. v. State, [937 P.2d 789](#) (Colo.App. 1996), rev'd on other grounds, [962 P.2d 919](#) (Colo. 1998).

Summary revocation of fireworks licenses was improper without the secretary of state making an initial finding of deliberate and wilful conduct because the licensee suffers an immediate loss of livelihood without due process protections of prior notice and formal hearing. Sanchez v. State, [730 P.2d 328](#) (Colo. 1986).

"Timely" notice, plus opportunity to submit arguments, is constitutionally required. When the specific time for a hearing is not expressly provided elsewhere, notice of the hearing must be "timely", and the licensee shall have the opportunity to submit written data, views, and arguments in order to afford due process. Bd. of Med. Exam'rs v. Palmer, [157 Colo. 40](#), [400 P.2d 914](#) (1965).

Although "double" notice not required. In a proceeding to revoke an optometrist's license, neither due process considerations nor this section requires "double" notice, i.e., notice that license revocation proceedings have been initiated, as well as a separate notice of the hearing itself. Dixon v. Bd. of Optometric Exam'rs, [39 Colo. App. 200](#), [565 P.2d 960](#) (1977); Colo. Motor Vehicle Dealer Bd. v. Butterfield, [9 P.3d 1148](#) (Colo.App. 2000); Colo. Motor Vehicle Dealer Bd. v. Brinker, [39 P.3d 1269](#) (Colo.App. 2001).

Department of agriculture did not violate notice requirements merely because it failed to provide written notice of plaintiff's right to submit written data, views, and arguments before the filing of the notice of charges. Speer v. Kourlis, [935 P.2d 43](#) (Colo.App. 1996); Colo. Motor Vehicle Dealer Bd. v. Butterfield, [9 P.3d 1148](#) (Colo.App. 2000).

The record did not support that plaintiff's conduct with regard to licensing violations was not willful and deliberate, and therefore plaintiff was entitled to an opportunity to comply with the law before licensing sanctions were imposed. Speer v. Kourlis, [935 P.2d 43](#) (Colo.App. 1996).

It is less than certain that the APA requires the state board for community colleges and occupational education to conduct a predeprivation hearing since it is not clear that a revocation results when an existing certificate merely expires because the renewal application is not

sufficient in form or substance as prescribed by § [12-59-108](#). Nat'l Camera, Inc. v. Sanchez, [832 P.2d 960](#) (Colo.App. 1991).

No conflict between this section and § [12-36-118](#) of the Medical Practice Act since the MPA does not reference summary suspensions. Bd. of Med. Exam'rs v. Court of Appeals, [920 P.2d 807](#) (Colo. 1996).

Applied in In re Estate of Smith v. O'Halloran, 557 F. Supp. 289 (D.Colo. 1983); In re Maul v. State Bd. of Dental Exam'rs, [668 P.2d 933](#) (Colo. 1983).

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Colorado Acts

CHAPTER 428, COLO. SESS. LAWS OF 2007

AN ACT

HOUSE BILL 07-1367

BY REPRESENTATIVE(S) Witwer, Carroll T., Cerbo, McGihon, Gardner B., Hicks, Mitchell V., and Todd; also SENATOR(S) Shaffer, Groff, Mitchell S., Veiga, and Tupa. CONCERNING THE REVISION OF STATUTES IN THE COLORADO REVISED STATUTES, AS AMENDED, AND, IN CONNECTION THEREWITH, AMENDING OR REPEALING OBSOLETE, INCONSISTENT, AND CONFLICTING PROVISIONS OF LAW AND CLARIFYING THE LANGUAGE TO REFLECT THE LEGISLATIVE INTENT OF THE LAWS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 48. 24-4-104 (3) (b) and (4) (b), Colorado Revised Statutes, are amended to read:

24-4-104. Licenses — issuance, suspension or revocation, renewal. (3) (b) The full investigation requirement specified in paragraph (a) of this subsection (3) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 12, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(4) (b) The full investigation requirement specified in paragraph (a) of this subsection (4) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 12, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

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