

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS,
AND GEOLOGISTS**

Proposed Language

(1) Amend Section 472 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

472. Citations of Unlicensed Persons.

(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to an unlicensed person who, unless otherwise exempt, is acting in the capacity of a professional engineer or a professional land surveyor.

(b) Each citation

(1) shall be in writing;

(2) shall describe with particularity the ~~nature~~ basis of the ~~violation~~ citation, including specific reference to the provision or provisions of law determined to have been violated;

(3) shall contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;

(4) shall be served on the cited person at the last known business or residence address personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in the Executive Officer applying to the appropriate superior court for a judgment in the amount of the administrative fine;

(6) shall inform the cited person that, if he ~~or~~ she desires an informal conference to ~~contest~~ appeal the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from ~~service~~ date of issuance of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to ~~contest~~ appeal the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from ~~service~~ the date of issuance of the citation.

Note: Authority cited: Sections 125.9, 148, 149, 6716, and 8710, Business and Professions Code. Reference: Sections 125.9, 148, 149, 6786, 6787, 8791, and 8792, Business and Professions Code.

(2) Amend Section 472.1 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

472.1. Assessment of Administrative Fine.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

- (1) The nature and severity of the violation;
- (2) The good or bad faith exhibited by the cited person;
- (3) The history of previous violations;
- (4) The extent to which the cited person has cooperated with the Board and the Board's investigation;
- (5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his/or her violation;
- (6) Any factors in extenuation or aggravation related to the violation;
- (7) Other matters as may be appropriate.

Note: Authority cited: Sections 125.9, 148, 149, 6716, and 8710, Business and Professions Code. Reference: Sections 125.9, 148, 149, 6786, 6787, 8791, and 8792, Business and Professions Code.

(3) Amend Section 472.2 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

472.2. Appeal of Citations.

(a) Any person served with a citation issued pursuant to Section 472 may ~~contest~~ appeal the citation by submitting a written request for a hearing to the Board within 30 calendar days of ~~service~~ the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of ~~service~~ the date of issuance of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer may, within 30 working days from receipt of a written request for an informal conference as provided in subsection (b), hold an informal conference with the cited person and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the Executive Officer for good cause. Following the informal conference, the Executive Officer ~~may~~ shall affirm, modify, or dismiss the citation, including any administrative fine assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order shall state in writing the reasons for the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made as provided in Section 472. This order shall be considered the conclusion of the informal conference proceedings.

(d) If the citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed to be withdrawn.

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from ~~service~~ the date of issuance of the citation, the cited person is deemed to have waived his/ or her right to a hearing or an informal conference.

Note: Authority cited: Sections 125.9, 148, 149, 6716, and 8710, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

(4) Amend Section 472.3 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

472.3. Compliance with Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/ or her control after the exercise of reasonable diligence, then he/ or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of an applicant for licensure as a professional engineer or as a professional land surveyor to abate the violation or to pay the fine within the time allowed is a ground for denial of licensure.

(c) Notwithstanding any other provision of the law, the Executive Officer may waive all or part of an administrative fine if the cited person ~~against whom the citation is assessed~~ satisfactorily completes all the requirements for, and is issued, a license.

(d) If the cited person fails to pay all of the assessed fine within the time allowed, the Executive Officer may apply to the appropriate superior court for a judgment in the amount of the administrative fine.

(e) If a hearing as provided in Section 472.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(f) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

Note: Authority cited: Sections 125.9, 148, 6716, and 8710, Business and Professions Code. Reference: Sections 125.9, ~~and~~ 148, and 149, Business and Professions Code.

(5) Amend Section 472.4 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

472.4. Disconnection of Telephone Service.

(a) If, upon investigation, the Executive Officer has cause to believe that an unlicensed individual acting in the capacity of a professional engineer or a professional land surveyor, who is not otherwise exempted from the provisions of the Professional Engineers Act or the Professional Land Surveyors' Act, has violated Sections 6787 or 8792 of the Code by advertising ~~in a telephone directory~~ with respect to the offering or performance of services, without being properly licensed, the Executive Officer may issue a citation under Section 472 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

Note: Authority cited: Sections 125.9, 148, 149, 6716, and 8710, Business and Professions Code. Reference: Sections 125.9, 148, ~~and~~ 149, 6786, 6787, 8791, and 8792, Business and Professions Code.

(6) Amend Section 473 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

473. Citations of Licensed Persons.

(a) The Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to any person who holds a license issued by the Board.

(b) Prior to the issuance of a citation in any case involving allegations of negligence and/or incompetence, as defined in Section 404, in the professional practice, the Executive Officer shall submit the alleged violation for review to at least one licensee of the Board who is competent in the branch of professional engineering or professional land surveying most relevant to the subject matter of the citation. The licensee reviewing the alleged violation shall be either a member of the Board's professional staff, a technical advisory committee member, or an expert consultant. Upon conclusion of the review, the reviewer shall prepare a finding of fact and a recommendation based upon that finding to which the Executive Officer shall give due consideration in determining whether cause exists to issue a citation.

(c) Each citation

(1) shall be in writing;

(2) shall describe with particularity the ~~nature~~ basis of the ~~violation~~ citation, including specific reference to the provision or provisions of law determined to have been violated;

(3) may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;

(4) shall be served on the cited person at the address of record on file with the Board personally or by certified mail with return receipt requested;

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the Board. ~~If a citation is not contested and the fine is not paid, and may result in~~ the full amount of the assessed fine shall be being added to the fee for renewal of the license. ~~A, in which case the~~ license shall not be renewed without the payment of the renewal fee and fine;

(6) shall inform the cited person that, if he/ or she desires an informal conference to ~~contest~~ appeal the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from ~~service~~ the date of issuance of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to ~~contest~~ appeal the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from ~~service~~ the date of issuance of the citation.

Note: Authority cited: Sections 125.9, 6716₂, and 8710, Business and Professions Code.
Reference: Sections 125.9, 6775, 6786, 8780₂, and 8791, Business and Professions Code.

(7) Amend Section 473.1 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

473.1. Assessment of Administrative Fines.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

- (1) The nature and severity of the violation;
- (2) The good or bad faith exhibited by the cited person;
- (3) The history of previous violations;
- (4) The extent to which the cited person has cooperated with the Board and the Board's investigation;
- (5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his/ or her violation;
- (6) Any factors in extenuation or aggravation related to the violation;
- (7) Other matters as may be appropriate.

Note: Authority cited: Sections 125.9, 6716₂, and 8710, Business and Professions Code.
Reference: Sections 125.9, 6775, 6786, 8780₂, and 8791, Business and Professions Code.

(8) Amend Section 473.2 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

473.2. Appeal of Citations.

(a) Any person served with a citation issued pursuant to Section 473 may ~~contest~~ appeal the citation by submitting a written request for a hearing to the Board within 30 calendar days of ~~service~~ the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of ~~service~~ the date of issuance of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer ~~shall~~ may, within 30 working days ~~of~~ from receipt of a written request for an informal conference as provided in subsection (b), hold an informal conference with the cited person and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the Executive Officer for good cause. Following the informal conference, the Executive Officer ~~may~~ shall affirm, modify, or dismiss the citation, including any administrative fine assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order shall state in writing the reasons for the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made as provided in Section 473. This order shall be considered the conclusion of the informal conference proceedings.

(d) If the citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference. ,

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed to be withdrawn.

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from ~~service~~ the date of issuance of the citation, the cited person is deemed to have waived his ~~or~~ her right to a hearing or an informal conference.

Note: Authority cited: Sections 125.9, 6716₂, and 8710, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

(9) Amend Section 473.3 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

473.3. Compliance with ~~Citations~~ Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his/ or her control after the exercise of reasonable diligence, then he/ or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of the cited person to abate the violation or to pay all of the assessed fine within the time allowed is grounds for suspension or revocation of the cited person's license.

(c) If the cited person fails to pay all of the assessed fine within the time allowed, the balance due for the fine shall be added to the renewal fee for the license, and the license shall not be renewed until the fine is paid in full.

(d) If a hearing as provided in Section 473.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(e) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

Note: Authority cited: Sections 125.9, 6716₂, and 8710, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

(10) Amend Section 473.4 of Division 5 of Title 16 of the California Code of Regulations to read as follows:

473.4. Disconnection of Telephone Service.

(a) If, upon investigation, the Executive Officer has cause to believe that a professional engineer or a professional land surveyor, who is not otherwise exempted from the provisions of the Professional Engineers Act or the Professional Land Surveyors' Act, has violated Sections 6787 or 8792 of the Code by advertising ~~in a telephone directory~~ with respect to the offering or performance of services, without being properly licensed, the Executive Officer may issue a citation under Section 473 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

Note: Authority cited: Sections 125.9, 148, 149, 6716₂, and 8710, Business and Professions Code. Reference: Sections 125.9, 148₂, ~~and~~ 149, 6775, 6786, 8780, and 8791, Business and Professions Code.

(11) Amend Section 3062 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3062. Citations of ~~Unregistered~~ Unlicensed Persons.

(a) ~~The executive officer is authorized to issue citations containing orders of abatement or administrative fines pursuant to Business and Professions Code sections 148 and 149 against persons~~ Executive Officer or his or her designee may issue a citation for any violation of any provision of law enforced by the Board to an unlicensed person who, unless otherwise exempt, is acting in the capacity of or engaging in the practice of a geologist, geophysicist, or certified specialist within this state without registration or certification in any discipline as a geologist, geophysicist, or certified specialist a professional geologist or a professional geophysicist.

(b) ~~If the executive officer has reasonable cause to believe that a person is acting in the capacity of, or engaging in the practice of, a geologist, geophysicist or certified specialist within this state without having a registration to so act or engage, the executive officer may issue a citation to that person.~~

(c) Each citation

(1) ~~for violation~~ shall be in writing; ~~and~~

(2) shall describe with particularity the basis of the citation, including specific reference to the provision or provisions of law determined to have been violated;:

(d) (3) ~~Each citation may~~ shall contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both ~~or may contain an assessment of an administrative fine in an amount not more than two thousand five hundred dollars (\$2,500). and an order of abatement;~~

(e) (4) ~~Service of a citation issued under this section shall be made by certified mail shall be served on the cited person at the last known business address or residence address of the person cited and shall include information regarding appeal rights and copies of the applicable code sections violated. personally or by certified mail with return receipt requested;~~

(5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in the Executive Officer applying to the appropriate superior court for a judgment in the amount of the administrative fine;

(6) shall inform the cited person that, if he or she desires an informal conference to appeal the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation;

(7) shall inform the cited person that, if he or she desires a hearing to appeal the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation.

Note: Authority cited: Sections 125.9, 148, 149, and 7818, Business and Professions Code.
Reference: Sections 125.9, 148, ~~and~~ 149, 7871, and 7872, Business and Professions Code.

(12) Amend Section 3062.1 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3062.1. Assessment of Administrative Fines.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

~~Before assessing an administrative fine pursuant to Section 3062, the executive officer shall give due consideration to the gravity~~

(1) The nature and severity of the violation;

(2) ~~the~~ The good or bad faith of the person exhibited by the cited person;

(3) ~~and the~~ The history of previous violations;

(4) The extent to which the cited person has cooperated with the Board and the Board's investigation;

(5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation;

(6) Any factors in extenuation or aggravation related to the violation;

(7) Other matters as may be appropriate.

~~(b) In no event shall the administrative fine be assessed in an amount greater than two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to any violation of the following provisions:~~

~~Business and Professions Code Section and Description~~

~~7830 Title Professional Geologist, or Certified Engineering Geologist, or Hydrogeologist~~

~~7830.1 Title of Professional Geophysicist~~

~~7832 Offers to Practice or Practices Geology or Geophysics for Others~~

~~7834 Unregistered Practice by Partnership or Corporation~~

~~7835 Sign or Seal Reports (Geology)~~

~~7835.1 Sign or Seal Reports (Geophysics)~~

~~7872(a) Unregistered Practice~~

~~7872(b) Presents or Attempts to File as His/Her Own the Certificate of Another~~

~~7872(d) Impersonates or Uses the Seal of Any Other Practitioner~~

~~7872(e) Uses Expired or Revoked Certificate of Registration~~

~~7872(g) Unregistered Manager, Proprietor, or Agent of Business from Which Geological or Geophysical Work is Solicited, Performed, or Practiced for Others~~

~~7872(h) Violation of Any Provision of the Geologist and Geophysicist Act~~

~~(c) Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:~~

~~1. The citation involves a violation that has an immediate relationship to the health and safety of another person;~~

~~2. The cited person has a history of two or more prior citations of the same or similar violations;~~

~~3. The citation involves multiple violations that demonstrate a willful disregard of the law;~~

~~4. The citation involves a violation or violations perpetrated against a child, elderly person or person with a disability.~~

Note: Authority cited: Sections 125.9, 148, 149, and 7818, Business and Professions Code.
Reference: Sections 125.9, 148, 149, 7871, and 7872, Business and Professions Code.

(13) Amend Section 3062.2 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3062.2. Appeal of Citations.

(a) Any person served with a citation pursuant to Section 3062 may ~~submit~~ appeal the citation by submitting a written request for appeal to the executive officer for a hearing to the Board within 30 calendar days of the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(b) The person cited, also, In addition to requesting a hearing as described in subsection (a), the cited person may, within 30 calendar days of the date of issuance of the citation, submit a written request within 30 days of the date of issuance of the citation for an informal conference with the eExecutive eOfficer with respect to violations alleged, scope of the order of abatement, or amount of administrative fine assessed.~~

~~(b) (c) The eExecutive eOfficer shall may, within 30 working days from receipt of the a written request for an informal conference as provided in subsection (b), hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the eExecutive eOfficer for good cause. At the conclusion of Following the informal conference, the eExecutive eOfficer shall either affirm, modify, or dismiss the citation, including any administrative fine levied assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. Said order The executive officer shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made by certified mail at the last known business address or residence address of the person cited as provided in Section 3062. The decision shall be deemed to be a final order of the executive officer. This order shall be considered the conclusion of the informal conference proceedings.~~

~~(e) (d) If the person cited submits a written request to appeal the citation within 30 days of the citation's issuance, the cited person shall be afforded an opportunity for a hearing, as provided for in subsection (b)(4) of section 125.9 of the Business and Professions Code citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.~~

~~(d) The cited person does not waive his or her right to request a hearing to appeal the citation by requesting an informal conference after which conference the citation is affirmed by the executive officer.~~

~~(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, on the matter of the citation shall be deemed to be withdrawn. If the citation is modified,~~

~~the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested in writing within 30 days of issuance of the subsequent citation in accordance with subsection (b)(4) of Section 125.9 of the Business and Professions Code.~~

~~(e) If, within 30 days of the date of issuance of the citation, the person cited has failed to file a written request to appeal the citation with the executive officer, the citation shall be deemed a final order.~~

(f) Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

(g) If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from the date of issuance of the citation, the cited person is deemed to have waived his or her right to a hearing or an informal conference.

Note: Authority cited: Sections 125.9, 148, and 7818, Business and Professions Code.
Reference: Sections 125.9 and 148, Business and Professions Code.

(14) Amend Section 3062.3 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3062.3. ~~Failure to Comply~~ Compliance with Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, then he or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

~~(b) The failure of an unregistered person acting as applicant for licensure as a professional geologist, a professional geophysicist, or a certified specialist to comply with a citation abate the violation or pay a the fine after it is final within the time allowed is a ground for denial of registration licensure.~~

~~(b) (c) Notwithstanding any other provisions of the law, the eExecutive oOfficer may waive all or part of the an administrative fine if the cited person satisfactorily completes all the requirements for, and is issued, a registration license or certification. Any outstanding injury to the public shall be settled to the satisfaction of a majority of the Board members prior to issuance of the registration.~~

(d) If the cited person fails to pay the assessed fine within the time allowed, the Executive Officer may apply to the appropriate superior court for a judgment in the amount of the administrative fine.

(e) If a hearing as provided in Section 3062.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(f) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

Note: Authority cited: Sections 125.9, 148, 149, and 7818, Business and Professions Code.
Reference: Sections 125.9, 148, and 149, Business and Professions Code.

(15) Amend Section 3062.4 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3062.4. Disconnection of Telephone Service.

(a) If, upon investigation, the ~~e~~Executive ~~o~~fficer has probable cause to believe that an ~~unregistered~~ unlicensed individual acting in the capacity of a professional geologist, a professional geophysicist, or a certified specialist, who is not otherwise exempted from the provisions of the Geologist and Geophysicist Act, ~~and is~~ has violated Section 7872 of the Code by advertising in a telephone directory with respect to the offering or performance of services, without being properly ~~registered,~~ licensed or certified, the ~~e~~Executive ~~o~~fficer may issue a citation under Section 3062 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the ~~e~~Executive ~~o~~fficer.

~~(b) The citation shall be stayed if the person to whom a citation is issued under subdivision (a) submits a written request to the executive officer for a hearing to appeal the citation. The executive officer shall afford an opportunity for a hearing, as specified in Section 3062.2.~~

~~(c) If the cited person to whom a citation and order of abatement is issued under subdivision (a) fails to comply with the order of abatement after the order is final as provided in Section 3062.2 as described in subsection (a) within the time allowed, the eExecutive officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.~~

Note: Authority cited: Sections 125.9, 148, 149, and 7818, Business and Professions Code.
Reference: Sections 125.9, 148, ~~and~~ 149, 7871, and 7872, Business and Professions Code.

(16) Amend Section 3063 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3063. Citations of Registered Licensed Persons.

~~(a) The executive officer is authorized to issue citations containing orders of abatement or administrative fines pursuant to Business and Professions Code section 125.9.~~

~~(b) If the executive officer has reasonable cause to believe that a geologist, geophysicist or certified specialist has committed any act or omission where the registrant is in violation of the Geologist and Geophysicist Act, the The eExecutive officer or his or her designee may, in lieu of filing an accusation, issue a citation to the registrant any person who holds a license issued by the Board.~~

~~(c) (b) Each citation for violation~~

- (1) shall be in writing ~~and~~;
- (2) shall describe with particularity the basis of the citation, including specific reference to the provision or provisions of law determined to have been violated.;
- (3) may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement;
- (4) shall be served on the cited person at the address of record on file with the Board personally or by certified mail with return receipt requested;
- (5) shall inform the cited person that failure to pay the fine within 30 calendar days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the Board and may result in the full amount of the assessed fine being added to the fee for renewal of the license, in which case the license shall not be renewed without the payment of the renewal fee and fine;
- (6) shall inform the cited person that, if he or she desires an informal conference to appeal the finding of a violation, the informal conference shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation;
- (7) shall inform the cited person that, if he or she desires a hearing to appeal the finding of a violation, that hearing shall be requested by written notice to the Board within 30 calendar days from the date of issuance of the citation.

~~(d) — Each citation may contain: (1) an order of abatement, which may include the fixing of a reasonable time for abatement of the violation; or (2) an assessment of an administrative fine in an amount not more than two thousand five hundred dollars (\$2,500).~~

~~(e) — Service of a citation issued under this section shall be made by certified mail to the registrant's address of record and shall include information regarding appeal rights and copies of the applicable code sections violated.~~

Note: Authority cited: Sections 125.9 and 7818, Business and Professions Code. Reference: Sections 125.9, 7860, and 7871, Business and Professions Code.

(17) Amend Section 3063.1 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3063.1. Assessment of Administrative Fines.

(a) In no event shall the administrative fine be less than \$50 or exceed \$5,000 for each violation.

(b) In determining the amount of an administrative fine, the Executive Officer shall consider the following factors:

~~Before assessing an administrative fine under section 3063, the executive officer shall give due consideration to the gravity~~

- (1) The nature and severity of the violation.;
- (2) ~~the~~ The good or bad faith of exhibited by the cited person.;
- (3) ~~and the~~ The history of previous violations.;
- (4) The extent to which the cited person has cooperated with the Board and the Board's investigation;

(5) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation;

(6) Any factors in extenuation or aggravation related to the violation;

(7) Other matters as may be appropriate.

(b) ~~In no event shall the administrative fine be assessed in an amount greater than two thousand five hundred dollars (\$2,500) for each inspection or each investigation made with respect to any violation of the following provisions:~~

~~Business and Professions Code section and Description~~

~~7831 Use of Expired, Suspended, or Revoked Registration~~

~~7839 Practice or Attempts to Practice Civil Engineering~~

~~7839.1 Geologist or Geophysicist Practicing Outside Area of Registered Practice~~

~~7860(b) Committed Deceit, Misrepresentation, Violation of Contract, Fraud, Negligence, Incompetence in Practice~~

~~7860(d) Aiding and Abetting in the Violation of Any Provision of the Geologist and Geophysicist Act~~

~~7872(b) Presents or Attempts to File as His/Her Own the Certificate of Another~~

~~7872(d) Impersonates or Uses the Seal of Any Other Practitioner~~

~~7872(e) Uses Expired or Revoked Certificate of Registration~~

~~7872(h) Violation of Any Provision of the Geologist and Geophysicist Act~~

(c) ~~Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:~~

1. ~~The citation involves a violation that has an immediate relationship to the health and safety of another person;~~

2. ~~The cited person has a history of two or more prior citations of the same or similar violations;~~

3. ~~The citation involves multiple violations that demonstrate a willful disregard of the law;~~

4. ~~The citation involves a violation or violations perpetrated against a child, elderly person or person with a disability.~~

Note: Authority cited: Sections 125.9 and 7818, Business and Professions Code. Reference: Sections 125.9, 7860, and 7871, Business and Professions Code.

(18) Renumber Section 3063.3 to new Section 3063.2 and amend Section 3063.2 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

~~3063.3~~ 3063.2. Appeal of Citations.

(a) Any ~~geologist, geophysicist or certified specialist~~ person served with a citation pursuant to Section 3063, may submit a written request for ~~appeal~~ a hearing to the ~~executive officer~~ Board within 30 calendar days of the date of issuance of the citation. Such hearings shall be conducted pursuant to the Administrative Procedure Act, Chapters 4.5 and 5, commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In addition to requesting a hearing as described in subsection (a), ~~The~~ cited person, ~~also,~~ may, within 30 calendar days of the date of issuance of the citation, submit a written request ~~within 30 days of the date of issuance of the citation~~ for an informal conference

with the ~~e~~Executive ~~o~~Officer with respect to violations alleged, abatement periods, amount of fines, and the reasonableness of the action required to abate the violation.

~~(b)~~ (c) The ~~e~~Executive ~~o~~Officer ~~shall~~ may, within 30 working days from receipt of ~~the~~ a written request for an informal conference as provided in subsection (b), hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. The 30-day period may be extended by the ~~e~~Executive ~~o~~Officer for good cause. ~~At the conclusion of~~ Following the informal conference, the ~~e~~Executive ~~o~~Officer shall ~~either~~ affirm, modify, or dismiss the citation, including any administrative fine ~~levied~~ assessed or order of abatement issued. An order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 calendar days from the informal conference. Said 30-day period may be extended by the Executive Officer for good cause. ~~Said order~~ The executive officer shall state in writing the reasons for his or her action and serve a copy of the findings and decision to the cited person within 30 days from the date of the informal conference the affirmation, modification, or dismissal of the original citation. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine. Service of this order shall be made ~~by certified mail at the last known business address or residence address of the person cited as provided in Section 3063.~~ The decision shall be deemed to be a final order of the executive officer. This order shall be considered the conclusion of the informal conference proceedings.

~~(e)~~ (d) If the geologist, geophysicist or certified specialist cited ~~submits a written request for a hearing to appeal the citation within 30 days of the citation's issuance, the cited person shall be afforded an opportunity for a hearing, as provided for in subsection (b)(4) of section 125.9 of the Business and Professions Code~~ citation is affirmed or modified following the informal conference, the cited person may request a hearing as provided in subsection (a) within 30 calendar days from service of the order described in subsection (c). The cited person shall not be permitted to request another informal conference.

~~(d)~~ The cited person does not waive his or her right to request a hearing to appeal the citation by requesting an informal conference, after which conference the citation is affirmed by the executive officer.

~~(e)~~ If the citation is dismissed after the informal conference, the request for a hearing, if any, on the matter of the citation shall be deemed to be withdrawn. If the citation is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested in writing within 30 days of issuance of the subsequent citation in accordance with subsection (b)(4) of Section 125.9 of the Business and Professions Code.

~~(e)~~ If, within 30 days of the date of issuance of the citation, the geologist, geophysicist or certified specialist cited has failed to file a written request to appeal the citation with the ~~e~~Executive ~~o~~Officer, the citation shall be deemed a final order.

~~(f)~~ Submittal of a written request for a hearing as provided in subsection (a), an informal conference as provided in subsection (b), or both stays the time period in which to abate the violation and/or to pay the fine.

~~(g)~~ If the written request for a hearing as provided in subsection (a) or an informal conference as provided in subsection (b) or both is not submitted within 30 calendar days from the date of issuance of the citation, the cited person is deemed to have waived his or her right to a hearing or an informal conference.

Note: Authority cited: Sections 125.9 and 7818, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

(19) Renumber Section 3063.4 to new Section 3063.3 and amend Section 3063.3 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3063.4 3063.3. Failure to Comply Compliance with Citations Order.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, then he or she may request from the Executive Officer an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

~~(b) The fFailure of a geologist, geophysicist or certified specialist~~ the cited person to comply with a citation abate the violation or to pay a all of the assessed fine after it is final within the time allowed is grounds for suspension or revocation of ~~a registration~~ the cited person's license.

~~(b) (c) If a geologist, geophysicist or certified specialist does not appeal a citation and the cited person~~ fails to pay all of the assessed fine within the time allowed, the balance due for the fine shall be added to the renewal fee for the registration license, and the registration license shall not be renewed until the fine is paid in full pursuant to subsection (b)(5) of Section 125.9 of the Business and Professions Code.

(d) If a hearing as provided in Section 3063.2(a) is not requested, payment of the fine shall not constitute an admission of the violation charged.

(e) Payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

Note: Authority cited: Sections 125.9 and 7818, Business and Professions Code. Reference: Section 125.9, Business and Professions Code.

(20) Adopt new Section 3063.4 of Division 29 of Title 16 of the California Code of Regulations to read as follows:

3063.4. Disconnection of Telephone Service.

(a) If, upon investigation, the Executive Officer has cause to believe that a professional geologist, a professional geophysicist, or a certified specialist, who is not otherwise exempted from the provisions of the Geologist and Geophysicist Act, has violated Section 7872 of the Code by advertising with respect to the offering or performance of services, without being properly licensed or certified, the Executive Officer may issue a citation under Section 3063 containing an order of abatement which requires the cited person to both cease the unlawful advertising and notify the telephone company furnishing services to the cited person to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and that subsequent calls to that number shall not be referred by the telephone

company to any new telephone number obtained by that person. The cited person shall provide written evidence of compliance to the Executive Officer.

(b) If the cited person fails to comply with an order of abatement as described in subsection (a) within the time allowed, the Executive Officer shall inform the Public Utilities Commission of the violation in accordance with Business and Professions Code section 149.

Note: Authority cited: Sections 125.9, 148, 149, and 7818, Business and Professions Code. Reference: Sections 125.9, 148, 149, 7860, and 7871, Business and Professions Code.