

# AGGRAVATING AND MITIGATING CIRCUMSTANCES

## R156-1-102. DEFINITIONS.

(2) "**Aggravating circumstances**" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

- a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
- b) dishonest or selfish motive;
- c) pattern of misconduct;
- d) multiple offenses;
- e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;
- f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;
- g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;
- h) vulnerability of the victim;
- i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;
- j) illegal conduct, including the use of controlled substances; and
- k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(17) "**Mitigating circumstances**" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

a) Mitigating circumstances include:

- i. absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;
- ii. personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;
- iii. timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;
- iv. full and free disclosure to the client or Division prior to the discovery of any misconduct;
- v. inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;
- vi. imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and
- vii. remorse.

b) The following factors may not be considered as mitigating circumstances:

- i. forced or compelled restitution;
- ii. withdrawal of complaint by client or other affected persons
- iii. resignation prior to disciplinary proceedings;
- iv. failure of injured client to complain;
- v. complainant's recommendation as to sanction; and
- vi. in an informal disciplinary proceeding brought pursuant to Subsection 58-1-501(2)(c) or (d) or Subsections R156-1-501(1) through (5):
  - A) argument that a prior proceeding was conducted unfairly, contrary to law, or in violation of due process or any other procedural safeguard;
  - B) argument that a prior finding or sanction was contrary to the evidence or entered without due consideration of relevant evidence;
  - C) argument that a respondent was not adequately represented by counsel in a prior proceeding; and
  - D) argument or evidence that former statements of a respondent made in conjunction with a plea or settlement agreement are not, in fact, true.

**R156-1-302. CONSIDERATION OF GOOD MORAL CHARACTER, UNLAWFUL CONDUCT, UNPROFESSIONAL CONDUCT, OR OTHER MENTAL OR PHYSICAL CONDITION.**

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- 1) This section applies in circumstances where an applicant or licensee:
  - a) is not automatically disqualified from licensure pursuant to a statutory provision; and
  - b)(i) has history that reflects negatively on the person's moral character, including past unlawful or unprofessional conduct; or
  - ii) has a mental or physical condition that, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare.
- 2) In a circumstance described in Section (1), the following factors are relevant to a licensing decision:
  - a) aggravating circumstances, as defined in Subsection R156-1-102(2);
  - b) mitigating circumstances, as defined in Subsection R156-1-102(17);
  - c) the degree of risk to the public health, safety or welfare;
  - d) the degree of risk that a conduct will be repeated;
  - e) the degree of risk that a condition will continue;
  - f) the magnitude of the conduct or condition as it relates to the harm or potential harm;
  - g) the length of time since the last conduct or condition has occurred;
  - h) the current criminal probationary or parole status of the applicant or licensee;
  - i) the current administrative status of the applicant or licensee;
  - j) results of previously submitted applications, for any regulated profession or occupation;
  - k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;
  - l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;
  - m) psychological evaluations; or
  - n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.