

641—26.8(135K) Denial, probation, suspension or revocation.

26.8(1) *Denial, probation, suspension or revocation of registration.* The department may deny an application for registration or renewal, place a registration on probation, suspend or revoke a registration, or order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

- a. Negligence or incompetence in the testing of a backflow prevention assembly, including failure to report improper application or installation of a backflow prevention assembly to the facility owner and the administrative authority.
- b. Knowingly submitting a false report of a test of a backflow prevention assembly to the owner of the facility, the local administrative authority, or the department.
- c. Fraud in obtaining registration or renewal including, but not limited to:
 - (1) Intentionally submitting false information on an application for registration or renewal;
 - (2) Submitting a false or forged certificate or other record of training or certification.
- d. Falsification of the assembly records set forth in subrule 26.6(2).
- e. Failure to comply with these rules or the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.
- f. Failure to pay registration, renewal or late fees.
- g. Habitual intoxication or addiction to drugs.
- h. Violating a statute of this state or another jurisdiction relating to backflow prevention assembly testing, including but not limited to crimes involving dishonesty, fraud, theft, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- i. Suspension, revocation, or other disciplinary action pertaining to backflow prevention assembly testing in another jurisdiction. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence.
- j. Knowingly making misleading, deceptive, untrue, or fraudulent representations regarding the testing of backflow prevention assemblies, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts that may constitute unethical conduct include:
 - (1) Verbally or physically abusing a client or coworker.
 - (2) Improper sexual contact with, sexual harassment of, or improper sexual advances upon a client or coworker. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- k. Failing to cooperate with an investigation or engaging in conduct attempting to subvert an investigation.
- l. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- m. Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.
- n. Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended, revoked, lapsed, or placed on inactive status.
- o. Acceptance of any fee by fraud or misrepresentation.
- p. Failure to appropriately respond to written communication from the department sent by registered or certified mail.

26.8(2) *Denial or revocation of training course approval.* The department may deny or revoke the approval for a training course or a continuing education course when it finds:

- a. The lead instructor for a training course is not qualified in accordance with paragraph 26.4(1) "f."
- b. The training course did not comply with paragraph 26.4(1) "e."
- c. The training course testing laboratory did not comply with paragraph 26.4(1) "g."
- d. The organization or person applying for approval of a training or continuing education course intentionally submitted false information to the department in support of such approval.

e. The organization or person conducting or sponsoring training has falsified training or continuing education records, including issuance of a certificate or other record of training to a person who did not successfully complete a training course or who did not attend continuing education training.

f. The organization or person responsible for a training or continuing education course has permitted physical or verbal abuse or sexual harassment of a student or instructor. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

g. The organization or person responsible for training courses and continuing education courses consistently fails to notify the department of such courses in a timely fashion as set forth in paragraphs 26.4(1) “*d*” and 26.4(2) “*a*,” or fails to pay its fees.

h. Failure to comply with these rules.

26.8(3) *Denial or revocation of approval as a third-party certification agency.* The department may deny or revoke the approval for a third-party certification agency when it finds:

a. The application for approval contains material misinformation regarding the conduct and standards of the certification program or its acceptance in other jurisdictions.

b. Failure to adhere to the standards and procedures stated in the application for approval in the process of certifying or renewing the certification of testers.

c. Violations of paragraph 26.4(3) “*b*” or other failure to comply with these rules.

26.8(4) *Complaints.* Complaints regarding a registered tester, an approved training course, or a third-party certification agency may be sent to the department. The complainant should provide as much pertinent and specific information as to a potential violation as they are able to.

26.8(5) *Appeals.* Notice of denial, probation, suspension or revocation of registration; denial, probation or revocation of course approval; or denial, probation or revocation of third-party certification agency approval will be sent to the affected individual or organization by certified mail, return receipt requested, or by personal service. The affected individual or organization may appeal the denial, probation, suspension or revocation by requesting a contested case hearing within 20 days of receipt of the department’s order. The notice of denial, probation, suspension or revocation is deemed to be suspended during the appeal. Prior to or at the contested case hearing, the department may rescind the notice upon satisfaction that the reason for the denial, probation, suspension or revocation has been or will be removed. 481—Chapters 9 and 10 are applicable to contested case appeals.

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