

CHAPTER 350  
ATHLETIC TRAINING

**645—350.1(152D) Definitions.**

“*Active engagement*” or “*actively engaged*” in the practice of athletic training, for the purposes of Iowa Code sections 152D.3(2) and 152D.3(3), means that an applicant is either:

1. Currently certified by the National Athletic Trainers Association, Board of Certification; or
2. Practicing athletic training as verified by notarized signatures from:

- The athletic director or administrator of the institution, facility, or agency for which the applicant is currently providing services; and
- The supervising physician for the institution, facility, or agency for which the applicant is currently providing services.

“*Administrator*” means the administrator of the Iowa board of athletic training examiners office.

“*Board*” means the Iowa board of athletic training examiners.

“*Licensed athletic trainer*” means a person licensed under Iowa Code chapter 152D.

“*NATA*” means the National Athletic Trainers Association.

“*NATABOC*” means the National Athletic Trainers Association Board of Certification.

“*Physical reconditioning*” means a part of the practice of athletic training which combines physical treatment and exercise and is carried out under the orders of a physician or physician assistant. Physical treatment is part of a service plan which includes but is not limited to the continued use of any of the following: cryotherapy, thermotherapy, hydrotherapy, electrotherapy, or the use of mechanical devices.

“*Physician*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state.

“*Practice of athletic training*” means the prevention, physical evaluation, emergency care, and physical reconditioning relating to injuries and illnesses incurred through sports-induced trauma, which occurs during the preparation for or participation in a sports competition or during a physical training program, either of which is sponsored by an educational institution, amateur or professional athletic group, or other recognized sponsoring organization, by a person who uses the title of licensed athletic trainer.

“*Supervising physician*” means a physician who supervises the athletic training services provided by a licensed athletic trainer.

“*Supervision*” means that a supervising physician directs the performance of a licensed athletic trainer in the development, implementation, and evaluation of an athletic training service plan as set out in 645—350.9(152D). Supervision shall not be construed as requiring the personal presence of a supervising physician at each activity of the licensed athletic trainer. It is the responsibility of the licensed athletic trainer to ensure that the practice of athletic training is carried out only under the supervision of a licensed physician.

**645—350.2(147) Availability of information.**

**350.2(1)** All information regarding rules, forms, time and place of meetings, minutes of meetings, records of meetings, and records of hearings is available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

**350.2(2)** Information may be obtained by writing to Administrator, Iowa Board of Athletic Training Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board address.

**645—350.3(147) Organization and proceedings of the board.**

**350.3(1)** The Iowa board of athletic training examiners consists of seven members appointed by the governor and confirmed by the senate. The members of the board shall include three licensed athletic trainers, three physicians licensed to practice medicine and surgery, and one member not licensed to practice athletic training or medicine and surgery who shall represent the general public. Members shall serve three-year terms. A quorum shall consist of a majority of the members of the board.

**350.3(2)** A chairperson, vice chairperson, and secretary shall be elected at the first board meeting after April 30 of each year.

**350.3(3)** The board shall hold quarterly meetings and may hold additional meetings as called by the board chairperson, a majority of the board members, or the administrator. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order whenever any objection is made as to the manner in which it proceeds at a meeting.

**645—350.4(152D) Temporary licensure.** Rescinded IAB 10/7/98, effective 11/11/98.

**645—350.5(152D) Temporary license renewal.** Rescinded IAB 10/7/98, effective 11/11/98.

**645—350.6(147,152D) Licensure requirements.** An applicant for a license as a licensed athletic trainer shall meet the following requirements:

**350.6(1)** Graduation and receipt of a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university with proof of completion of the following courses:

- a. Advanced athletic training;
- b. Basic athletic training;
- c. Health;
- d. Human anatomy;
- e. Human physiology;
- f. Kinesiology; and
- g. Physiology of exercise.

Applicants who have obtained their education outside the United States and its territories must have their academic degrees validated as equivalent to the baccalaureate or postbaccalaureate degree conferred by a U.S. regionally accredited college or university in addition to providing proof of completion of the above coursework.

**350.6(2)** Successful completion of the National Athletic Trainers Association Board of Certification examination. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the Iowa board of athletic training examiners.

**645—350.7(152D) Application for licensure.**

**350.7(1)** Any person seeking a license shall submit to the board a completed application form which is provided by the board.

**350.7(2)** The application form shall be completed in accordance with instructions contained in the application. If the application is not completed in accordance with the instructions, the application will not be reviewed by the board and the applicant will be so notified.

**350.7(3)** Each application shall be accompanied by a check or money order in the amount required payable to the Iowa Board of Athletic Training Examiners.

**350.7(4)** No application will be considered until requested supporting documents and fee have been received by the board.

**645—350.8(152D) Documentation of physician supervision.** Each licensee must maintain documentation of physician supervision. It is the responsibility of the licensee to ensure that documentation of physician supervision is obtained and maintained, including the following:

1. Athletic training service plan as set out in 645—350.9(152D);
2. Dates and names of physician and physician assistant orders or referrals;
3. Initial evaluations and assessments;
4. Treatments and services rendered, with dates; and
5. Dates of subsequent follow-up care.

**645—350.9(152D) Athletic training service plans.** Athletic training service plans shall be composed of the following components as taken from the NATA Board of Certification 1991 Standards of Athletic Training for Direct Service and for Service Programs.

**350.9(1) Standards for athletic training—direct service.**

*a. Standard 1—direction.* The athletic trainer renders service or treatment under the direction of a physician or dentist.

*b. Standard 2—injury and ongoing care services.* All services should be documented in writing by the athletic trainer and shall become part of the athlete's permanent records.

*c. Standard 3—documentation.* The athletic trainer shall accept responsibility for recording details of the athlete's health status. Documentation shall include:

- (1) Athlete's name and any other identifying information.
- (2) Referral source (doctor, dentist).
- (3) Date, initial assessment, results and database.
- (4) Program plan and estimated length.
- (5) Program methods, results and revisions.
- (6) Date of discontinuation and summary.
- (7) Athletic trainer's signature.

*d. Standard 4—confidentiality.* The athletic trainer shall maintain confidentiality as determined by law and shall accept responsibility for communicating assessment results, program plans, and progress with other persons involved in the athlete's program.

*e. Standard 5—initial assessment.* Prior to treatment, the athletic trainer shall assess the athlete's level of functioning. The athlete's input shall be considered an integral part of the initial assessment.

*f. Standard 6—program planning.* The athletic training program objectives shall include long- and short-term goals and an appraisal of those which the athlete can realistically be expected to achieve from the program. Assessment measures to determine effectiveness of the program shall be incorporated into the plan.

*g. Standard 7—program discontinuation.* The athletic trainer, with collaboration of the physician or dentist, shall recommend discontinuation of the athletic training service when the athlete has received optimal benefit of the program. The athletic trainer, at the time of discontinuation, shall note the final assessment of the athlete's status.

**350.9(2) Standards for athletic training—service program.** The following are minimal standards. Each one is essential to the practice of athletic training. It is intended that these standards be used by administrators as well as by athletic training personnel in the development of their service programs and to assess their effectiveness.

*a. Standard 1—objectives.* Basic to the development of any program are its intended purposes. Objectives and applicable policies should be clearly outlined for each activity, such as: athletic treatment, education of personnel, supervision and interdisciplinary relations. The objectives of the service program should implement those of the institution itself.

*b. Standard 2—planning.* Each objective should be supported by detailed plans for its implementation.

*c. Standard 3—evaluation.* Objective methods of data collection and analysis should be used in relation to each component of the program to determine the need for service, assess its effectiveness and indicate a need for change.

*d. Standard 4—types of services offered.* Athletic training is appropriately a health service offered under the direction of a physician or dentist for the prevention, immediate care, management/disposition and reconditioning of athletic injuries.

*e. Standard 5—personnel.* The service program should be directed by a NATA-certified athletic trainer who has met the qualifications established by the National Athletic Trainers Association Board of Certification, Inc. Education, qualifications and experience of all other personnel should meet existing standards and should be appropriate to their duties.

*f. Standard 6—facilities and budget.* Space, equipment, supplies and a continuing budget should be provided by the institution and should be adequate in amount, variety and quality to facilitate the implementation of the service program.

*g. Standard 7—records.* Objective, permanent records of each aspect of the service program should indicate:

- (1) Date, name of physician or dentist referral;
- (2) Initial evaluation and assessment;
- (3) Treatment or services rendered, with date; and
- (4) Dates of subsequent follow-up care.

*h. Standard 8—reports.* Written reports on each aspect of the service program should be made annually.

**645—350.10(147,152D) License renewal.**

**350.10(1)** The biennial license renewal period shall extend from March 1 of each odd-numbered year to February 28 of the next odd-numbered year.

**350.10(2)** At least one month before the renewal date a renewal notice will be sent to each license holder, who according to the board's records has complied with the continuing education requirements, at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

**350.10(3)** If the licensee renews within 30 days after the renewal date, a penalty fee of \$50 is required in addition to the renewal fee.

**350.10(4)** The board reserves the right to audit documentation of physician supervision with license renewal.

**645—350.11(147,152D) Fees.** All fees are nonrefundable.

**350.11(1)** Application fee for a license to practice athletic training is \$100.

**350.11(2)** Biennial renewal fee for a license to practice athletic training is \$100.

**350.11(3)** Penalty fee for failure to submit renewal fee when due is \$50.

**350.11(4)** Reinstatement fee for a lapsed license is \$100.

**350.11(5)** Fee for a duplicate license if lost or stolen is \$10.

**350.11(6)** Fee for a certified statement that a licensee is licensed in this state is \$10.

**350.11(7)** Fee for a returned check is \$15.

**645—350.12(272C) License denial.**

**350.12(1)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at hearing.

**350.12(2)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in rule 350.28(272C).

**645—350.13(272C) Continuing education.**

**350.13(1)** The biennial continuing education compliance period shall extend from October 1 of each even-numbered year to September 30 of the next even-numbered year. During this period of time, 50 hours of approved continuing education shall be completed by the licensee in order to renew the license for the next biennial license period beginning March 1 of the next odd-numbered year.

**350.13(2)** If a new license holder is licensed during the first year of the biennial continuing education period, the licensee shall be required to complete only 25 hours of continuing education for renewal of the license. If a new license holder is licensed during the second year of the biennial continuing education period, the licensee is exempt from meeting continuing education requirements of the first license renewal.

**350.13(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity offered by a provider approved by the department, upon recommendation of the board.

**350.13(4)** No hours of continuing education shall be carried over into the next continuing education period.

**350.13(5)** It is the responsibility of each licensee to finance the costs of continuing education.

**350.13(6)** The board reserves the right to audit a licensee's continuing education records each biennium. Falsifying reports or failure to meet continuing education requirements may result in formal disciplinary action.

**645—350.14(272C) Standards for approval of providers of continuing education activities.** An organization, institution, agency, or individual shall be qualified for approval as a provider of continuing education activities if either:

**350.14(1)** The provider is currently a NATABOC-approved provider of continuing education; or

**350.14(2)** The provider, by application to the board, demonstrates each of the following:

- a.* The provider presents organized programs of learning;
- b.* The provider presents subject matter which integrally relates to the practice of athletic training;
- c.* The provider's program activities contribute to the professional competency of the licensee;
- d.* The provider's program presenters are individuals who have education, training, or experience by reason of which said individuals may be considered qualified to present the subject matter of the programs; and
- e.* The sponsor registers annually with the board and provides proof of continued compliance with paragraphs "a" to "d" above.

**645—350.15(272C) Procedures for approval of providers of continuing education activities.**

**350.15(1)** An organization, institution, agency, or individual which desires to be designated as an approved sponsor of continuing education activities shall apply on a form provided by the board. If approved by the board, such organization, institution, agency, or individual shall be designated as an approved sponsor of continuing education activities; and the activities of such an approved sponsor which are relevant to the practice of athletic training shall be deemed automatically approved for continuing education credit.

**350.15(2)** All approved sponsors shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include the sponsor name and number; date of program; name of participant; total number of hours excluding breaks and meals; program title and presenter; and program site.

**350.15(3)** All sponsors shall keep on record for at least four years a list of licensees attending the continuing education program and a content outline of that program. Upon request of the board, these records shall be submitted to the board within 30 calendar days of the request.

**350.15(4)** The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice by certified mail to that sponsor of the revocation. The sponsor shall have the right to a hearing regarding the revocation. The request must be sent within 20 days after receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The hearing shall be conducted by the board. The final decision shall be rendered by the board.

**645—350.16(272C) Reporting of licensee.** Each licensee shall be required to submit a licensee's report on continuing education to the board at the time of license renewal. The board will select the licensees whose continuing education reports will be audited by the board. Each licensee to be audited will be required to provide copies of certificates of attendance or completion for all reported activities. Additional documentation may be requested.

**645—350.17(272C) Disability or illness.** The board may, in individual cases involving disability or illness, grant a waiver of the continuing education requirements for a period of up to one calendar year. A written request for waiver shall be submitted by the licensee and shall be accompanied by acceptable documentation.

**645—350.18(272C) Hearings—continuing education.** In the event of denial, in whole or in part, of any application for approval of continuing education program or credit for continuing education activity, the applicant or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 90 days after the receipt of the request for hearing. The hearing shall be conducted by the board. The final decision shall be rendered by the board.

**645—350.19(272C) Inactive licensure.** A licensee who is not engaged in the practice of athletic training in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance upon written application to the board. The application shall contain a statement that the licensee will not hold oneself out to the public as a licensed athletic trainer during the time the license is inactive. The application for waiver of compliance shall be submitted upon a form provided by the board.

**645—350.20(272C) Reinstatement of inactive license.** The board may reinstate an inactive license upon completion of all of the following:

1. A written request for reinstatement;
2. Payment of the current renewal fee; and
3. Completion of continuing education requirements for the period of time the license was inactive.

**645—350.21(272C) Reinstatement of lapsed license.**

**350.21(1)** A license shall be considered lapsed if not renewed within 30 days of renewal date. If the license lapses, the practice of holding oneself out as licensed to practice athletic training must cease until a license is reinstated by the board.

**350.21(2)** A licensee who wishes to reinstate a lapsed license shall pay past due renewal fee to a maximum of four years, a reinstatement fee, and penalty fees.

**350.21(3)** Continuing education requirements for the period of time the license was lapsed are not waived.

**350.21(4)** Application for reinstatement shall be made on a form provided by the board.

**645—350.22(272C) Complaints.** A complaint regarding a licensed athletic trainer shall be made in writing to the Iowa Board of Athletic Training Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, or shall be made upon the board's own motion pursuant to evidence received by the board. The complaint shall include the complainant's name, address, and telephone number, the licensee's name, and a statement of the facts which appraises the board of the allegations against the licensee.

**645—350.23(272C) Report of malpractice claims or actions.** Each licensee shall report to the board every adverse judgment in a malpractice action to which the licensee is a party and every settlement of a claim against a licensee alleging malpractice. A copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

**645—350.24(272C) Investigation of complaints or malpractice claims.**

**350.24(1) Investigator.** The chair of the board may assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or may request the state department of inspections and appeals to investigate the complaint or malpractice claim. The investigating board member or employee of the department of inspections and appeals may request information from any peer review committee which may be established to assist the board. The investigating board member or employee of the department of inspections and appeals may consult with an assistant attorney general concerning the investigation. A board member shall not preside at a contested case proceeding if the board member personally investigated the complaint.

**350.24(2) Informal discussion.** In the course of conducting or directing an investigation, the board may request the licensee to attend a voluntary informal discussion before a board committee. The licensee is not required to attend or participate in the informal discussion. An informal discussion constitutes a part of the board's investigation of a pending disciplinary case, and the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing. However, the board members who participate in the informal discussion shall not preside at a contested case proceeding.

**645—350.25(272C) Methods of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revoke license.
2. Suspend license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Place a license on probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000 which may be imposed for any violation of 645—350.26(272C).
9. Issue a citation and warning.
10. Impose other sanctions allowed by law as may be appropriate.

**645—350.26(272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—350.25(272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

- 350.26(1)** Fraud in procuring a license.
- 350.26(2)** Professional incompetency.
- 350.26(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- 350.26(4)** Habitual intoxication or addiction to the use of drugs.
- 350.26(5)** Conviction of a felony related to the profession or occupation of the licensee. A copy of record of conviction or plea of guilty shall be conclusive evidence.
- 350.26(6)** Fraud in representations as to skill or ability.
- 350.26(7)** Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- 350.26(8)** Involuntary commitment for treatment of mental illness or substance abuse.
- 350.26(9)** Representing oneself as a licensed athletic trainer when the license has been suspended or revoked.
- 350.26(10)** Revocation, suspension, or other disciplinary action taken by a certification/licensure authority of another state, territory, or country; or failure of the licensee to report such action in writing to the administrator of the board of athletic training.
- 350.26(11)** Negligence by the licensee:
  - a. Failure to exercise due care.
  - b. Improper delegation of duties or inadequate supervision of employees or other individuals, whether or not injury results.
  - c. Conduct, practice, or conditions which impair the ability to safely and skillfully practice the profession.
- 350.26(12)** Prohibited acts:
  - a. Permitting another person to use one's license.
  - b. Practicing outside the scope of the profession.
  - c. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.
  - d. Verbally, physically, or sexually abusing clients/patients.
  - e. Any sexual intimidation between an athletic trainer and a client/patient.

**350.26(13)** Unethical business practices:

- a. False or misleading advertising.
- b. Betrayal of a professional confidence.
- c. Falsifying client/patient records.
- d. Professional conflict of interest.
- e. Misappropriation of funds.

**350.26(14)** Failure to report a change of name or address to the Administrator, Athletic Trainer Advisory Board, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 30 days.

**350.26(15)** Falsification of a continuing education record.

**350.26(16)** Failure to report any judgment or settlement of malpractice claim or action to the Administrator, Athletic Trainer Advisory Board, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within 30 days of occurrence.

**350.26(17)** Failure to comply with a subpoena issued by the department.

**350.26(18)** Failure to report to the board any violation by another licensee of the grounds for discipline as listed in this rule.

**350.26(19)** Failure to respond to a request from the board within 30 days of certified mail notice of the request for response.

**350.26(20)** Failure to maintain timely and adequate records.

**350.26(21)** An athletic trainer shall not engage in sexual misconduct. Sexual misconduct includes the following:

a. Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a patient.

b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

**350.26(22)** Failure to adequately supervise personnel.

**350.26(23)** Violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

**350.26(24)** Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

a. Reporting incorrect treatment dates for the purpose of obtaining payment;

b. Reporting charges for services not rendered;

c. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

d. Aiding a patient in fraudulently obtaining payment from a third-party payer.

**350.26(25)** Violation of any board statute or administrative rule.

**645—350.27(272C) Alternative procedures and settlement.**

**350.27(1)** *Informal settlement—parties.*

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecuting attorney, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board.

b. The full board shall not be involved in negotiation until presentation of a final, written, signed informal settlement to the full board for approval.

**350.27(2)** *Informal settlement—waiver of notice and opportunity to be heard.* Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board.

**350.27(3)** *Informal settlement—board approval.* All informal settlements are subject to approval of the board. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

**645—350.28(272C) Disciplinary hearings.**

**350.28(1)** *Notice of hearing.* If there is a finding of probable cause for a disciplinary hearing, the board shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least 20 days before the date of the hearing. If the licensee has absented or removed from the state, the notice of hearing and statement of charges shall be so served at least 20 days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee are unknown, service may be had by publication as provided in the Iowa Rules of Civil Procedure upon filing the affidavit required by the rules.

**350.28(2)** *Statement of charges.* The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged. The statement of charges shall specify the statute(s) and rule(s) which are alleged to have been violated.

**350.28(3)** *Legal representation.* Every statement of charges shall be reviewed by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board.

**350.28(4)** *Continuances.* A party has no automatic right to a continuance or delay of the disciplinary hearing. A party may request a continuance of the board no later than seven days prior to the date set for hearing. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances. The board administrator shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board. A board member shall not be contacted in person, by mail, by telephone, or by any other means by a party seeking a continuance.

**350.28(5)** *Prehearing conference.* The presiding officer or hearing officer either on the presiding officer's or the hearing officer's own motion or at the request of either party may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice of the date, time, and place of the prehearing conference shall be given to each party by ordinary mail.

**350.28(6)** *Failure by respondent to appear.* If a respondent, upon whom proper notice of hearing has been served, fails to appear at the hearing, the board may proceed with the conduct of the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

**350.28(7)** *Hearing procedure.* To the extent not addressed in this chapter, the board adopts the rules of the department of public health found in 641—Chapter 173, Iowa Administrative Code, as the procedure for hearing before the board.

**350.28(8)** *Application for rehearing.* The filing of an application for rehearing is not necessary to exhaust administrative remedies. Within 20 days after the issuance of a final decision, any party may file an application for rehearing. The application shall state the specific grounds for rehearing and the relief sought and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted within 20 days after service on the board. Upon rehearing, the board shall consider facts not presented in the original hearing only if:

- a. Such facts arose subsequent to the original proceedings; or
- b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or
- c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

**350.28(9)** *Appeal.* Any appeal to the district court from disciplinary action of the board or denial of a license shall be taken within 30 days from the date of issuance of the decision by the board.

**350.28(10)** *Transcript.* The party who appeals the decision of the board to district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

**350.28(11)** *Publication of decisions.* Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

**350.28(12)** *Hearing open to the public.* A hearing of the board concerning licensees or an applicant shall be open to the public unless the applicant or licensee or applicant or licensee's attorney requests in writing that the hearing be closed to the public.

**350.28(13)** *Reinstatement.* Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.

*a.* If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

*b.* All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the board.

*c.* An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

*d.* An order denying or granting reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law. The order shall be published as provided for in this rule.

**350.28(14)** *Voluntary surrender.* The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted in connection with a disciplinary proceeding, has the same force and effect as an order of revocation.

**645—350.29(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating facts or other countervailing considerations.
4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—350.30(272C) Peer review committees.**

**350.30(1)** A complaint may be assigned to a peer review committee for review, investigation, and report to the board.

**350.30(2)** The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.

**350.30(3)** Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

**350.30(4)** The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

**645—350.31(272C) Disciplinary hearings—fees and costs.**

**350.31(1)** The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the professional licensure division as provided for in subrule 350.31(8).

**350.31(2)** In addition to this fee, the board may also recover from the licensee the cost for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

**350.31(3)** The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

**350.31(4)** Witness fees and expenses.

*a.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

*b.* The board may assess to the licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

*c.* The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this rule, the provisions of Iowa Code section 625.2 do not apply.

*d.* The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this rule, the provisions of Iowa Code section 625.2 do not apply.

*e.* The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

*f.* The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue and finance guidelines in effect January 1, 1994.

**350.31(5)** Depositions.

*a.* The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

*b.* Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

*c.* If the deposition is that of an expert witness, the deposition costs include a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

**350.31(6)** Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

**350.31(7)** A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed \$75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

**350.31(8)** All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the professional licensure division.

**350.31(9)** Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

**645—350.32(272C) Publication of decisions.** Rescinded IAB 10/7/98, effective 11/11/98.

These rules are intended to implement Iowa Code chapters 152D and 272C.

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CHAPTERS 351 to 354

Reserved