

CHAPTER 12
DISCIPLINE

[Prior to 5/4/88, see 470—135.201 to 470—135.215, and 470—135.301]

653—12.1(272C) General. The board has authority to impose discipline for any violation of Iowa Code chapters 147, 148, 272C or the rules promulgated thereunder.

653—12.2(272C) Method of discipline. The board has authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specified period.
3. Nonrenewal of license.
4. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require a reexamination.
8. Order a physical or mental examination, or order alcohol or drug screening within a time specified by the board.
9. Impose civil penalties not to exceed \$10,000.
10. Issue citation and warning.
11. Such other sanctions allowed by law as may be appropriate.

653—12.3(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 seriousness 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 circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. 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.

653—12.4(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2(272C), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

12.4(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the Iowa department of public health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

12.4(2) Professional incompetency. Professional incompetency includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

b. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

c. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa.

12.4(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and includes any representation contrary to their legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of medical ethics and code of ethics set out in rules 653—13.10(147,148,272C) and 653—13.11(147,148,272C), as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

d. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in their presence.

e. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any prescribed prescription which is intended to be completed and issued at a later time.

12.4(4) Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to, the inability of a physician to practice medicine and surgery, osteopathic medicine and surgery or osteopathy with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a physician's ability to practice the profession with reasonable skill and safety.

12.4(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of a physician who has committed a public offense in the practice of their profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon a physician in this state.

12.4(6) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a physician having made misleading, deceptive or untrue representations as to the physician's competency to perform professional services for which the physician is not qualified to perform by training or experience.

12.4(7) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisement includes, but is not limited to, an action by a physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

1. Inflated or unjustified expectations of favorable results.
2. Self-laudatory claims that imply that the physician is a skilled physician engaged in a field or specialty of practice for which the physician is not qualified.
3. Representations that are likely to cause the average person to misunderstand; or
4. Extravagant claims or to proclaim extraordinary skills not recognized by the medical profession.

12.4(8) Willful or repeated violations of the provisions of these rules and Iowa Code chapters 147 and 148. Willful or repeated violations of the provisions of these rules and chapters 147 and 148 include, but are not limited to, a physician's having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of medical examiners or the Iowa department of public health or violated a lawful order of the board or the Iowa department of public health in a disciplinary hearing or has violated the provisions of Title VIII (Practice Acts), Code of Iowa, as amended.

12.4(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

12.4(10) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

12.4(11) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy entered into in another state, district, territory or country.

12.4(12) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery or osteopathy.

12.4(13) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals, whether the same is committed in the course of their practice or otherwise, and whether committed within or without this state.

12.4(14) Inability to practice medicine and surgery, osteopathic medicine and surgery or osteopathy with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

12.4(15) Willful or repeated violation of lawful rule or regulation adopted by the board.

12.4(16) 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.

12.4(17) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

12.4(18) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

12.4(19) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose. Indiscriminately or promiscuously prescribing, administering or dispensing includes, but is not limited to:

a. The prescribing, administering or dispensing for the treatment of obesity any stimulant anorectic agent classified as Schedule II in Iowa Code section 124.206, or Schedule IIN of the Federal Controlled Substance Act. An anorectic agent includes, but is not limited to:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers, as a single agent or in combination with other agents.

(2) Methamphetamine, its salts, and salts of isomers, as a single agent or in combination with other agents.

(3) Phenmetrazine and its salts, as a single agent or in combination with other agents.

(4) Methylphenidate as a single agent or in combination with other agents.

(5) Any other stimulant anorectic agents added to the above schedules.

b. Reserved.

12.4(20) Knowingly submitting a false report of continuing education or failure to submit the annual report of continuing education.

12.4(21) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

12.4(22) Failure to comply with a subpoena issued by the board.

12.4(23) Failure to file the reports required by rule 12.12(272C) concerning acts or omissions committed by another licensee.

12.4(24) Willful or repeated gross malpractice.

12.4(25) Willful or gross negligence.

12.4(26) Obtaining any fee by fraud or misrepresentation.

12.4(27) Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

12.4(28) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code sections 147.55 and 148.6.

12.4(29) Failure to comply with the recommendations issued by the Centers for Disease Control of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139C.2(3), and applicable hospital protocols established pursuant to Iowa Code section 139C.2(1).

12.4(30) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to 1995 Iowa Acts, chapter 115. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J.

12.4(31) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

12.4(32) Improper management of medical records, including failure to maintain timely, accurate, and complete medical records.

This rule is intended to implement Iowa Code sections 148.6, 148.7, and 272C.3 to 272C.5.

653—12.5(272C) Procedure for peer review. A complaint made to the board by any person relating to licensure or concerning the professional conduct of a licensee may be assigned to a peer review committee for review, investigation and report to the board.

653—12.6(272C) Peer review committees.

12.6(1) The board may establish and register peer review committees.

12.6(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.

12.6(3) The board may provide investigatory and related services to peer review committees upon request.

12.6(4) 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.

653—12.7(272C) Duties of peer review committee.

12.7(1) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

12.7(2) The peer review committees shall thoroughly investigate all complaints and make written recommendations to the board.

a. Written recommendations shall contain a statement of facts, the recommendation for disposition, and the rationale supporting the recommendation.

b. The written recommendations shall be signed by the members of the peer review committees concurring in the report.

c. If the peer review committee finds that it is unable to investigate the complaint, the complaint shall be returned together with an explanation to the board.

These rules are intended to implement Iowa Code sections 272C.3 and 272C.4.

653—12.8(272C) Board review of recommendations. The board shall consider and act upon the recommendations of the peer review committees at the next board meeting held after submission of the written recommendations, provided that the peer review report is received by the board 20 days prior to the next scheduled board meeting.

These rules are intended to implement Iowa Code sections 272C.3 and 272C.4.

653—12.9(272C) Reporting of judgments or settlements. 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 the licensee alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

653—12.10(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts or omissions in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

653—12.11(272C) Reporting of acts or omissions. Each licensee, having firsthand knowledge of acts or omissions set forth in rule 12.4(272C), shall report to the board those acts or omissions when committed by another person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, provided, however, no licensee shall be required to report information which is deemed to be a confidential communication as the result of a physician-patient relationship or which is prohibited by state or federal statute. The report shall include the name and address of the licensee and the date, time and place of the incident.

653—12.12(272C) Failure to report licensee. Upon obtaining information that a licensee failed to file a report required by rule 12.11(272C) within 30 days from the date the licensee initially acquired the information, the board may initiate a disciplinary proceeding against the licensee who failed to make the required report.

653—12.13(272C) Immunities. A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

653—12.14(272C) Doctor-patient privileged communications. The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation. No provisions of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or stenographer or confidential clerk of the attorney, shall be interpreted to restrict access by the board, its staff or agents to information sought in an investigation being conducted by the board.

653—12.15(272C) Confidentiality of investigative files. Complaint files, investigation files, and all other investigation reports and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the board, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

653—12.16(272C) Impaired physician review committee. Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board establishes the impaired physician review committee.

12.16(1) Definitions.

“*Impaired physician program contract*” or “*contract*” means the written document establishing the terms for participation in the impaired physician program prepared by the impaired physician review committee.

“*Impairment*” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychiatric or physical disorder or disability.

“*IPP*” or “*program*” means the impaired physician program.

“*IPRC*” or “*committee*” means the impaired physician review committee.

“*Self-report*” means the licensee providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging the same from a second party.

12.16(2) Purpose. The impaired physician review committee evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of physicians who self-report impairments.

12.16(3) Composition of the committee. The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC includes, but is not limited to:

- a. Executive director of the board or the director’s designee from the board’s staff;
- b. One physician who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program and board-ordered probation for drug or alcohol dependency, addiction, or abuse;
- c. One practitioner with expertise in substance abuse/addiction treatment programs;
- d. One physician with expertise in the diagnosis and treatment of neuropsychiatric disorders and disabilities; and
- e. One public member.

12.16(4) Eligibility. To be eligible for participation in the impaired physician recovery program, a licensee must self-report an impairment or suspected impairment directly to the office of the board. A licensee is deemed ineligible to participate in the program if the board or committee finds evidence of any of the following:

- a. The licensee engaged in the unlawful diversion or distribution of controlled substances or illegal substances;
- b. At the time of the self-report, the licensee is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;
- c. The licensee has caused harm or injury to a patient;
- d. There is currently a board investigation of the licensee that concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;
- e. The licensee has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of medicine; or
- f. The licensee failed to provide truthful information or to fully cooperate with the board or committee.

12.16(5) Type of program. The impaired physician program is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired physician. The committee shall meet with the licensee and, upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's impairment. The committee shall prepare an impaired physician program contract, to be signed by the licensee, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's obligations therein.

12.16(6) Terms of participation. A licensee shall agree to comply with the terms for participation in the IPP established in the contract. Terms of participation specified in the contract shall include, but are not limited to:

a. Duration. The length of time a licensee shall participate in the program shall be determined by the committee in accordance with the following:

- (1) Participation in the program for licensees impaired as a result of chemical dependency or alcohol or substance abuse or addiction is set at a minimum of four years.
- (2) Length of participation in the program for licensees with impairments resulting from neuropsychiatric or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

b. Noncompliance. A licensee participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the licensee, any person responsible for providing or monitoring treatment, or another party shall result in the following:

- (1) First instance. Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPRC shall make a report to the board that includes recommendations as to whether treatment should be augmented or formal charges should be filed.
- (2) Second instance. Upon receiving notification of a second instance of noncompliance including, but not limited to, a relapse, the IPRC shall nullify the contract and refer the case to the board for the filing of formal charges or other appropriate action.

c. Practice restrictions. The IPRC may impose restrictions on the license to practice medicine as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

12.16(7) Limitations. The IPRC establishes the terms and monitors a participant's compliance with the program specified in the contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of medicine by a participant shall be referred to the board for appropriate action.

12.16(8) Confidentiality. The IPRC is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the IPP under the auspices of the IPRC is not a matter of public record.

Rules 12.1(272C) to 12.16(272C) are intended to implement Iowa Code sections 147.55, 148.6, 272C.3, 272C.4, 272C.6, 272C.8, and 272C.9.

653—12.17 to 12.49 Reserved.

DISCIPLINARY PROCEDURE

653—12.50(147,148,17A,272C) Disciplinary procedure.

12.50(1) Proceedings. The proceeding for revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or the denial of a license, shall be substantially in accord with the following procedures which are an alternative to or in addition to the procedures stated in Iowa Code sections 147.58 through 147.71, 148.6 through 148.9.

12.50(2) Investigations. The board shall, upon receipt of a complaint, or upon its own motion, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline. Complaints received relating to physician supervision of physician assistants shall be copied or summarized and forwarded to the board of physician assistant examiners.

12.50(3) Form and content of the complaint. The complaint shall be made in writing, orally, or in any other form deemed acceptable by the board. A form provided by the board may be used. The form may be obtained from the office of the board upon request. The complaint shall contain the following information:

1. The full name and address of the complainant except in instances in which the identity of the complainant is unknown.
2. The full name, address and telephone number, if known, of the physician.
3. A clear and accurate statement of the facts that fully apprises the board of the allegations against the physician.

12.50(4) *Place and time of filing of the complaint.* The complaint may be delivered in person, by telephone, other telecommunications or electronic devices, or by mail to the executive director of the board. The current office address is: Iowa Board of Medical Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319-0180.

Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

12.50(5) *Investigation of allegations.* For the board to determine if probable cause exists to file a statement of charges, the executive director shall direct compliance staff to conduct an investigation of the allegations made in the complaint. The executive director may refer the complaint directly to a registered peer review committee or medical expert for investigation or consultation.

Prior to the commencement of a contested case proceeding, the licensee who is the subject of the complaint shall be contacted by the executive director, an investigator, a medical expert consulting with the agency, or peer review committee, and offered the opportunity to respond to the allegations made in the complaint. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview or conference.

12.50(6) *Investigation report.* Upon completion of the investigation, the executive director or designee shall prepare a report for the board's consideration, which report shall contain the position or defense of the respondent, discuss jurisdiction and set forth any legal arguments and authorities that appear applicable to the case. The report shall be concluded with a recommendation as to whether probable cause exists for further proceedings.

12.50(7) *Informal settlement.* The executive director or the respondent may request that an informal conference be held to determine whether licensee discipline can be resolved in a just manner and in furtherance of the public interest. Neither the executive director nor respondent is required to use this informal procedure. If the executive director and respondent agree to negotiate a settlement, the various points of a proposed settlement, including a stipulated statement of facts, shall be set forth in writing. Negotiations for a proposed settlement shall be completed at least seven days prior to the hearing date set by the order for hearing. Except, the executive director shall have power to grant additional time after consultation with the board chairperson (or a member designated by the chairperson) for continued negotiations in instances where additional time will clearly lead to a satisfactory settlement prior to the hearing date. The proposed settlement shall be binding if approved by the board and signed by both the board chairperson (or a member designated by the chairperson) and the respondent.

12.50(8) *Ruling on the initial inquiry.*

a. Rejection. If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

b. Requirement of further inquiry. If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If a determination is made by the board to initiate disciplinary action the board may enter into an informal settlement, issue a citation or warning or recommend formal disciplinary proceedings. Prior to the initiation of formal disciplinary action in matters involving the supervision of physician assistants the board shall, before initiating such action, forward a copy of the investigative report to the board of physician assistant examiners for its advice and recommendations. The board of physician assistant examiners shall respond within six weeks, or sooner if the issues warrant it. The board shall consider the advice and recommendations of the board of physician assistant examiners.

12.50(9) Order for hearing. The board may, upon its own motion or upon receipt of a complaint in writing, and shall, if such a complaint is filed by the director of public health, issue an order fixing the time and place for hearing thereon. A written notice of hearing together with a statement of the charges shall be served upon the licensee at least 30 days before said hearing in the manner required for the service of an original notice or by restricted certified mail, return receipt requested.

12.50(10) Notice by publication. If licensees have absented or removed themselves from the state, the notice and statement of the charges shall be so served at least 30 days before the date of the hearing, wherever the licensees may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the board shall proceed with the hearing as hereinafter provided.

12.50(11) 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, and shall be in sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated, and may also include the additional information which the board deems appropriate to the proceeding.

12.50(12) Legal representation. Every statement of charges and notice of hearing prepared by the board 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.

12.50(13) Notice of hearing. The notice of hearing shall state:

- a. The date, time and place of hearing.
- b. A statement that the party may be represented by legal counsel at the hearing.
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- d. A reference to the statutes and rules involved.
- e. A short and plain statement of the matter asserted.
- f. A statement that the respondent has the right to appear at a hearing and be heard.
- g. A statement requiring the respondent to submit an answer of the type specified in subrule 12.50(14) within 20 days after receipt of the notice of hearing.
- h. A statement requiring the respondent within a period of ten days after receipt of the notice of hearing to:

- (1) Acknowledge receipt of the notice of hearing.
- (2) State whether or not they will be present at the hearing.
- (3) State whether they will require an adjustment of date and time of the hearing; and
- (4) Furnish the board with a list of witnesses they intend to have called.

12.50(14) Form of answer. The answer shall show venue as "Before the Iowa State Board of Medical Examiners" and shall be captioned "Answer".

The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

12.50(15) *Continuances.* A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the executive director 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 executive director shall have power to grant continuances after consultation, if needed, with the chairperson of the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

12.50(16) *Request for a more definitive statement.* The respondent may at any time request the board to make the statement of charges more definite and certain, by submitting to the board a written request indicating the matters concerning which a more definite statement is necessary in order to facilitate the preparation of the respondent's defense. The board will respond to a request for a more definite statement within ten days of receipt thereof.

12.50(17) *Prehearing conferences.* The presiding officer or hearing officer either on their own motion or at the request of either the executive director or the respondent may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. Notice by ordinary mail shall be given to each party of the date, time and place of the prehearing conference.

12.50(18) *Appearance.* The licensee shall have the right to appear in person or by attorney before the board at the licensee's expense.

12.50(19) *Subpoena powers.* In connection with the initial inquiry set forth in subrule 12.50(8), the board is authorized by law to subpoena books, papers, records and any other real evidence whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing). After service of the notice of hearing contemplated by subrules 12.50(9) and 12.50(10), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records and other real evidence will be issued to a party upon request. Application should be made to the executive director specifying the evidence sought. Subpoenas for witnesses may also be obtained. The executive director shall issue all subpoenas for both parties upon request.

b. Discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.

c. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under subrule 12.50(25) or by statute.

d. The evidence outlined in Iowa Code section 17A.13(2), where applicable and relevant, shall be available to a party upon request.

12.50(20) *Refusal to obey subpoena.* In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena, and if the person fails to obey the order of the court, the person may be found guilty of contempt of court. The presiding officer of a hearing panel or a hearing officer may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

12.50(21) *Failure by respondent to appear.* If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board or hearing panel shall 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.

12.50(22) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained for at least five years from the date of decision. Any party to a proceeding may record, at their own expense, stenographically or electronically, any portion or all of the proceedings.

12.50(23) *Hearings.* A hearing may be conducted before the board or a panel of not less than three members. Either the board or the panel may be assisted by a hearing officer or an administrative law judge.

a. When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice of the profession when holding disciplinary hearings, the board may appoint a panel of not less than three specialists not having a conflict of interest to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

b. When a hearing is held before the board or a three-member hearing panel, the board chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer or hearing officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

c. The presiding officer and other board members have the right to conduct a direct examination at the outset of a witness's testimony or at a later stage thereof. Direct examination and cross-examination by board members is subject to objections properly raised in accordance with the rules of evidence noted in subrule 12.50(25).

d. The hearing shall be open to the public unless the licensee or attorney requests in writing that the hearing be closed to the public.

12.50(24) *Order of proceedings.* Before testimony is presented the record shall show the identity of any board members present, hearing panel, or hearing officer, and the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded.

Hearings before the board or a panel of the board or before a hearing officer shall generally follow the order established by these rules, subject to modification at the discretion of the board or of the panel of the board conducting the proceedings.

1. The presiding officer or designee shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

2. The assistant attorney general representing the public interest before the board shall make an opening statement.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve their opening statement until just prior to the representation of evidence by the respondent.

4. The presentation of evidence on behalf of the public.

5. The presentation of evidence on behalf of the respondent(s).

6. Rebuttal evidence on behalf of the public.

7. Rebuttal evidence on behalf of the respondent(s).

8. Closing arguments first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

12.50(25) *Rules of evidence-documentary evidence-official notice.*

a. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

b. Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

c. Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

d. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

e. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

f. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

12.50(26) *Final decision.* When six or more members of the board preside over the reception of the evidence at the hearing, its decision is a final decision.

a. When a panel of three specialists presides over the reception of the evidence at the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The respondent or attorney upon notice prescribed by the board, shall have the opportunity to appear personally to present the respondent's position and arguments to the board. The decision of the board is a final decision.

b. If the hearing is conducted by a three-member hearing panel as specified in subrule 12.50(23) or by an administrative hearing officer, the decision is a proposed decision and subject to the review provisions of 12.50(29).

c. A proposed or final decision shall be in writing and shall consist of the following parts:

(1) A concise statement of the facts which support the finding of fact.

(2) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

d. Conclusions of law which shall be supported by cited authority or reasoned opinion.

e. The decision or order which sets forth the action to be taken or the disposition of the case.

f. The decision may include any of the following:

(1) That the respondent be exonerated.

(2) Revocation of license.

(3) Suspension of license until further order of the board or for a specified period.

(4) Nonrenewal of license.

(5) Prohibit permanently, until further order of the board or for a specific period, the engaging in specified procedures, methods or acts.

(6) Probation.

- (7) Require additional education or training.
- (8) Require reexamination.
- (9) Order a physical or mental examination, or order alcohol or drug screening within a time specified by the board.
- (10) Impose civil penalties not to exceed \$10,000.
- (11) Issue citation and warning.
- (12) Such other sanctions allowed by law as may be appropriate.

12.50(27) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

12.50(28) Notification of decision. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final or proposed decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first.

12.50(29) Proposed decision-appeal to board-procedures and requirements. A proposed decision as defined in subrule 12.50(26) becomes a final decision unless appealed in accordance with the following procedure:

a. A proposed decision may be appealed to the board or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

b. The board may review a proposed decision or order on its own motion by serving notice on all parties within 30 days of a proposed decision or order rendered in accordance with subrule 12.50(26).

c. Within seven days after service of the notice of appeal, the appellant shall serve ten copies of the exceptions, if any, together with the brief and argument on the executive director. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 14 days following service of exceptions and brief on the executive director to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the board or executive director.

d. Oral argument of the appeal is discretionary but may be required by the board upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the executive director shall notify all parties of the date, time and place. The board chairperson or a designated board member shall preside at the oral argument and determine the procedural order of the proceedings.

e. The record on appeal shall be the entire record made before the hearing panel or administrative hearing officer.

12.50(30) Motion for rehearing. Within 20 days after issuance of a final decision, any party may file an application for a 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 executive director.

a. Upon a rehearing, the board shall consider facts not presented in the original proceeding if either:

- (1) Such facts arose subsequent to the original proceedings; or

(2) The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or

(3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

b. The decision made upon a rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

12.50(31) Final order. The final decision of the board shall be summarized in a final order which shall be signed for the board by its chairperson, vice chairperson or secretary. The final order shall clearly state the discipline imposed upon the licensee. A copy of the final order, findings of fact and final decision shall be served upon the licensee in the manner of service of an original notice or by restricted certified mail, return receipt requested.

12.50(32) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the director's order.

12.50(33) Board decision. The board's decision and final order imposing discipline upon a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

12.50(34) Rules of general applicability. Ex parte communications, separation of functions, judicial review and appeals shall be in accordance with the terms of the Iowa administrative procedure Act.

12.50(35) Publication of decisions. Final decisions of the board relating to disciplinary procedures shall be transmitted to the appropriate professional association(s), Federation of State Medical Boards, and a newspaper(s) of general circulation to be selected by the board.

12.50(36) Reinstatement. Any person whose license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, has been revoked, or suspended by the board, may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

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 director's order or the date of voluntary surrender.

b. All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of their license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including all matters preliminary and ancillary thereto, 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 of reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law, and must be based upon the affirmative vote of not fewer than six members of the board. The order of reinstatement shall be published as provided for in subrule 12.50(35).

12.50(37) License denial. Any request to have a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board at the address in subrule 12.50(4), by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license.

12.50(38) An appeal of a contested case decision taken pursuant to the provisions of Iowa Code section 148C.6A by a physician assistant involving discipline of the physician assistant shall be conducted pursuant to the provisions of subrule 12.50(29).

This rule is intended to implement Iowa Code sections 17A.22, 147.58, 147.71, 148.6 to 148.9, and 272C.5.

653—12.51(272C) Disciplinary hearings—fees and costs.

12.51(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee:

“*Deposition*” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Medical examination fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

12.51(2) Disciplinary hearing fee. 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 department of public health as provided in subrule 12.51(6).

12.51(3) Recovery of related hearing costs. The board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) 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.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process.

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, providing the costs are calculated as follows:

(1) 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 that section, the provisions of Iowa Code section 625.2 do not apply.

(2) 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 that section, the provisions of Iowa Code section 625.2 do not apply.

(3) 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.

(4) 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 on July 1, 1993.

c. Deposition costs. 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.

(1) 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.

(2) If the deposition is of an expert witness, the deposition cost includes 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.

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

12.51(4) Certification of reimbursable costs. Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the executive director/designated staff person shall certify any reimbursable costs to the board. The executive director 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 the filing.

12.51(5) Assessment of fees and costs. 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.

a. A party shall file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

12.51(6) Payment of fees and costs. All fees and costs assessed pursuant to this subrule shall be made in the form of a check or money order made payable to the state of Iowa and delivered by the licensee to the department of public health.

12.51(7) Failure to make payment. Failure of a licensee to pay any fees 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.

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C.

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