

CHAPTER 4 DISCIPLINE

[Prior to 5/23/84, IAC, "Disciplinary Proceedings" appeared as Ch 8]
[Prior to 5/23/84, "Licensure to Practice—Licensed Practical Nurse" appeared as Ch 4. See Ch 3.]
[Prior to 8/26/87, Nursing Board[590] Ch 4]

655—4.1(17A,147,152,272C) Board authority. The board of nursing may discipline a registered nurse, a licensed practical nurse or an advanced registered nurse practitioner for any grounds stated in Iowa Code chapters 147, 152 and 272C, or rules promulgated thereunder.

655—4.2(17A,147,152,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

4.2(1) In accordance with Iowa Code section 272C.3(1) "c," the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) The executive director, or an authorized designee, may review and investigate any complaint information received, in order to determine the probability that a violation of Iowa law or administrative rule has occurred.

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records and other real evidence which are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

4.3(2) A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Each subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the executive director or designee;
- f. The date of issuance;
- g. A return of service.

4.3(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

655—4.4(17A,147,152,272C) Board action. The board shall review investigative conclusions and do one of the following:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

655—4.5(17A,147,152,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

4.5(1) The committee shall determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of nursing and submit a report of its findings to the board.

4.5(2) The board shall review the committee's findings and proceed with action available under rule 4.4(17A,147,152,272C).

4.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.

655—4.6(17A,147,152,272C) Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure or professional conduct.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

a. Falsification of the application, credentials, or records submitted to the board for licensure as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.

c. Impersonating any applicant in any examination for licensure as a registered nurse or licensed practical nurse.

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

- a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.
- b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.
- c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.
- d. Willful or repeated failure to practice nursing with reasonable skill and safety.
- e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.
- f. Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.
- g. Failure to comply with the requirements of Iowa Code chapter 139A.

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

- a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records and applications.
- b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.
- c. Failing to provide written notification of a change of address to the board within 30 days of the event.
- d. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.
- e. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction wherein it occurred.
- f. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.
- g. Failing to submit verification of compliance with continuing education requirements or exceptions for the period of time being audited.

4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

- a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b. Allowing another person to use one's nursing license for any purpose.
- c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.
- d. Improper delegation of nursing services, functions, or responsibilities.
- e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
- f. Committing an act which causes physical, emotional, or financial injury to the patient or client.
- g. Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or client.
- h. Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.
- i. Violating the confidentiality or privacy rights of the patient or client.
- j. Discriminating against a patient or client because of age, sex, race, creed, illness, or economic or social status.
- k. Failing to assess, accurately document, or report the status of a patient or client.

- l.* Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.
- m.* Fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses.
- n.* Practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.
- o.* Being involved in the unauthorized manufacture, possession, distribution, or use of a controlled substance.
- p.* Pleading guilty to or being convicted of a misdemeanor or felony related to the practice of nursing, without regard to the jurisdiction wherein the action occurred.
- q.* Engaging in behavior that is contradictory to professional decorum.
- r.* Failing to report suspected wrongful acts or omissions committed by a licensee of the board.
- s.* Failing to comply with an order of the board.

655—4.7(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following:

1. Revocation.
2. Suspension.
3. Probation.
4. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2) “e.” Assessment of a fine shall be specified in the order and may not exceed a maximum amount of \$1,000. Fines may be incurred for:
 - Practicing without an active license: \$50 for each calendar month or part thereof, beginning on the date that a license enters inactive status.
 - Obtaining a license by falsification of continuing education records: \$50 for each contact hour falsified.
 - Violating rule 4.6(17A,147,152,272C): an amount deemed appropriate.
5. Continuing education, reexamination, or both.
6. Citation and warning.