

CHAPTER 51
PROCEDURAL RULES

[Ch 6 renumbered as Ch 51, IAC 9/20/78]
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—51.1(153) Notice and hearing of contested case.

51.1(1) *Probable cause.* In the event the board finds there is probable cause for taking disciplinary action against a licensee following investigation of a complaint, the board shall order a contested case hearing be held.

51.1(2) *Notice of hearing.* The board shall issue a written notice setting the time and place for the hearing, together with a statement of the charges against the respondent. Such notice shall including the following:

- a. The date, time, and place of hearing.
- b. A statement that the respondent may be represented, at respondent's expense, by legal counsel at the hearing.
- c. A statement of the legal authority 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 the hearing and be heard.
- g. A statement requiring the respondent to submit an answer within 25 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 the respondent will be present at the hearing.
- (3) State whether the respondent will request a change of the date and time of the hearing.

51.1(3) *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 additional information which the board deems appropriate.

51.1(4) *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.

51.1(5) *Service.* The notice of hearing and the statement of charges shall be served on the respondent not less than 20 days prior to the date of hearing either by personal delivery or by mailing a copy by certified or registered mail to the licensee's last-known address as shown by the records of the board.

51.1(6) *Continuances.* A party has not automatic right to a continuance of a scheduled hearing. However, a party may request a continuance from the board anytime up to 15 days before the date set for hearing. Within 15 days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances. The executive director shall have the power to grant continuances after consultation with the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

51.1(7) Subpoena powers. Prior to the service of the notice of hearing, the board has investigative subpoena authority under Iowa Code chapters 17A and 272C. After service of the notice of hearing under subrule 51.1(5), 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. Subpoenas for witnesses may also be obtained. The executive director shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. The board chairperson or designee may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

51.1(8) Refusal to obey a subpoena. In the event of a refusal to obey a subpoena, either party or 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.

51.1(9) Discovery. Following the filing of the order and notice of hearing, discovery procedures applicable to civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the board, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

51.1(10) 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 same extent as if the respondent has been present.

650—51.2(153) Settlements.

51.2(1) A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, the respondent, the board or its designee. Neither the board nor the respondent is required to participate in the informal settlement process. The executive director and chairperson of the board, or the chairperson's designee(s), shall have authority to negotiate on behalf of the board.

51.2(2) The full board shall not be involved in negotiation until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

51.2(3) Consent to negotiation by the respondent during informal settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chairperson or designee(s).

51.2(4) Negotiations for a proposed settlement shall be completed at least ten days prior to the hearing date set by the order for hearing. However, after consultation with the board chairperson or designee, the executive director shall have the power to grant additional time for continued negotiations in instances where additional time will likely lead to a satisfactory settlement prior to the hearing date.

51.2(5) No proposed settlement shall be presented to the board for approval until it is in final, written form signed by the respondent.

51.2(6) All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party. The proposed settlement shall be binding if approved by the board and signed by both the chairperson or the chairperson's designee and the respondent.

51.2(7) A board member who participates in the negotiation of a proposed settlement is not disqualified from participating in the adjudication of the contested case.

51.2(8) Consent to settlement negotiations by the respondent constitutes a waiver of any objection to the participation in the adjudication of the contested case of any board member who participated in the review of a settlement agreement which was not approved by the board.

650—51.3(153) Prehearing conference. A prehearing conference(s) may be held prior to the commencement of a contested case hearing but no later than 20 days prior to the hearing date. It may be held upon the request of the hearing panel, board, prosecuting attorney, executive director or the respondent. The prehearing conference may be held by telephone. The parties shall exchange witness and exhibit lists in advance of a telephone prehearing conference.

51.3(1) The executive director or designee shall set the date, time, and location of the prehearing conference and shall notify the respondent.

51.3(2) The executive director may request the assistance of an administrative law judge at the prehearing conference.

51.3(3) The parties shall be prepared to discuss the following subjects at the prehearing conference and the executive director or administrative law judge may issue appropriate orders concerning:

- a. Possibility of a settlement.
- b. Entry of a scheduling order to include deadlines for completion of discovery.
- c. Stipulations of law or fact.
- d. Stipulations on the admissibility of exhibits.
- e. Submission of expert and other witness lists.
- f. Submission of exhibit lists.
- g. Identification of matters which the parties intend to request be officially noticed.
- h. Any other matter which may aid, expedite, or simplify the hearing or determination of any issue.

650—51.4(153) Hearings.

51.4(1) *Hearing by members.* A hearing may be conducted before the board or a panel of not less than three members of the board at least two of whom are licensed by the board.

51.4(2) *Panel of nonboard member specialists.* When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

51.4(3) *Presiding officer.* The board chairperson or a person designated by the chairperson shall serve as the presiding officer. The presiding officer shall conduct the hearing and shall have authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. Either the board or a three-member panel may be assisted by an administrative law judge.

51.4(4) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

51.4(5) Examination of witnesses by board. The presiding officer and board members have the right to question a witness. Examination of witnesses by board members is subject to objections properly raised in accordance with the rules of evidence set forth in 650—51.6(153).

51.4(6) Public hearing. The hearing shall be open to the public unless the licensee or attorney for the licensee requests that the hearing be closed.

650—51.5(153) Record of proceedings. Hearings shall be recorded by a certified shorthand reporter. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

650—51.6(153) Evidence.

51.6(1) Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14.

51.6(2) Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board or hearing panel.

650—51.7(153) Final decision.

51.7(1) When five or more members of the board preside over the reception of the evidence at the hearing, the decision is a final decision.

51.7(2) When a panel of three specialists presides over 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 parties or the parties' attorneys shall, upon notice prescribed by the board, have the opportunity to appear personally to represent their positions and arguments to the board. The decision of the board is a final decision.

51.7(3) When a panel of three board members presides over the hearing, the panel's decision is a proposed decision. A proposed decision becomes a final decision without further proceedings unless appealed in accordance with the following procedures:

a. A proposed decision may be appealed to the board by a party to the decision who is adversely affected.

b. The board may initiate review of a proposed decision on its own motion at any time within 30 days of the issuance of the proposed decision.

c. If an appeal is commenced within 7 days after service of the notice of appeal, the appellant shall serve nine copies of its brief in support of the appeal on the executive director and shall furnish an additional copy to each appellee by first-class mail. Any appellee shall have 14 days following service of appellant's exceptions and brief to file its brief. Except for the notice of appeal, the time requirements set forth in this rule may be extended by stipulation of the parties or may be extended upon application approved by a member of the board.

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 if required by the board, the executive director shall notify all parties of the date, time, and place. The board chairperson or designee shall preside at the oral argument.

e. The record on appeal shall be the entire record made before the hearing panel. Cost associated with the appeal shall be paid by the appealing party.

650—51.8(153) Rehearing.

51.8(1) 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. Copies of the application 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.

51.8(2) Upon a rehearing, the board may consider additional evidence if:

a. Such facts arose after the original proceeding was concluded; or
b. The party offering such evidence could not reasonably have provided such evidence at the original proceeding.

51.8(3) The decision made upon a rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceedings.

650—51.9(153) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A and Iowa Code section 153.33(4) "g" and "h."

650—51.10(153) Notification of decision. All parties to a contested case shall be promptly furnished with a copy of any decision or order either by personal delivery or by certified or first-class mailing. Delivery or first-class mailing of any decision or order to an attorney of record in a contested case hearing shall constitute notification of the respondent. Service by mail is complete upon mailing.

650—51.11(153) Publicizing disciplinary action.

51.11(1) Final decisions of the board relating to licensee discipline shall be transmitted to the appropriate state and national professional associations and news media, which may include a newspaper(s) of general circulation, and to other news media, person or organization upon request.

51.11(2) The board shall notify other boards of dentistry in states where the respondent is also licensed of disciplinary action taken against the Iowa licensee.

51.11(3) The board shall notify the American Association of Dental Examiners of disciplinary action taken against an Iowa licensee.

51.11(4) The board shall, in accordance with federal law, notify the National Practitioners Data Bank of disciplinary action taken against an Iowa licensee.

650—51.12(153) Reinstatement.

51.12(1) Any person whose license has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

51.12(2) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered pursuant to disciplinary action, an initial application for reinstatement may not be made until one year has elapsed from the date of the final order.

51.12(3) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other disciplinary matters before the board.

51.12(4) 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 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.

51.12(5) An application for reinstatement may include a request for a hearing on the issues raised on the application or any other information furnished to the board. The hearing on an application for reinstatement shall be a contested case proceeding within the meaning of Iowa Code section 17A.2(2).

51.12(6) The order to grant or deny reinstatement shall include findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 51.11(153).

51.12(7) A person whose license to practice dentistry or dental hygiene was revoked or suspended must successfully complete the examination required at the time of reinstatement for dental or dental hygiene licensure. The board may in its discretion require remedial training in addition to or in lieu of the examination requirements.

650—51.13(153) Disciplinary hearings—fees and costs.

51.13(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 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 purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

51.13(2) 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. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

- a. Transcript.
- b. Witness fees and expenses.
- c. Depositions.
- d. Medical examination fees incurred relating to a person licensed under Iowa Code chapter 147.

51.13(3) Fees and costs assessed by the board pursuant to subrule 51.13(2) shall be calculated by the board's executive director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee.

51.13(4) Fees and costs collected by the board pursuant to subrule 51.13(2) shall be allocated to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

51.13(5) Failure of a licensee to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

These rules are intended to implement Iowa Code chapter 17A and sections 272C.5 and 272C.6.

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