

## MEDICINE BOARD[653]

### Adopted and Filed

#### Rule making related to licensure and criminal convictions

The Board of Medicine hereby amends Chapter 9, “Permanent and Administrative Medicine Physician Licensure,” Chapter 10, “Resident, Special and Temporary Physician Licensure,” Chapter 17, “Licensure of Acupuncturists,” Chapter 20, “Licensure of Genetic Counselors,” Chapter 23, “Grounds for Discipline,” and Chapter 25, “Contested Case Proceedings,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 272C.3.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2627.

#### *Purpose and Summary*

These amendments implement 2020 Iowa Acts, House File 2627, and provide the inclusion of new subrules and amendments to existing subrules concerning the use of criminal convictions in eligibility determinations and initial licensing decisions.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5473C**. No public comments were received. Item 7 has been updated to reflect the engrossment of **ARC 5600C**, IAB 5/5/21.

#### *Adoption of Rule Making*

This rule making was adopted by the Board on April 16, 2021.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on August 18, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 653—9.3(147,148) as follows:

#### **653—9.3(147,148) Eligibility for licensure.**

**9.3(1) and 9.3(2)** No change.

**9.3(3) *Use of criminal convictions in eligibility determinations and initial licensing decisions.***

*a. Definitions.*

“Complete criminal record” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Disqualifying offense” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

*b. License application.* Unless an applicant for licensure petitions the board for an eligibility determination pursuant to paragraph 9.3(3) “c,” the applicant’s convictions will be reviewed when the board receives a completed license application.

(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

(3) An applicant must submit as part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

(6) Any application fees paid will not be refunded if the license is denied.

*c. Eligibility determination.*

(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

(2) To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

1. A completed petition for eligibility determination form;

2. The complete criminal record for each of the petitioner’s convictions;

3. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;

4. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and

5. Payment of a nonrefundable fee of \$25.

d. Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner fails to timely appeal, the board's written decision will become a final order.

(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

(2) The contested case hearing shall be closed to the public, and the board's review of a proposed decision shall occur in closed session.

(3) The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

e. Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

ITEM 2. Amend rule 653—10.3(147,148) as follows:

**653—10.3(147,148) Resident physician licensure.**

**10.3(1)** No change.

**10.3(2)** ~~Resident licensure~~ license eligibility. To be eligible for a resident license, an applicant shall meet all of the following requirements:

a. to c. No change.

d. The applicant's license is not denied by the board due to the commission of a disqualifying offense, as provided in 653—subrule 9.3(3).

**10.3(3) to 10.3(11)** No change.

ITEM 3. Amend subrule 10.4(2) as follows:

**10.4(2)** Special license eligibility. To be eligible for a special license, an applicant shall meet all of the following requirements:

a. to f. No change.

g. Demonstrate English proficiency as set forth in subparagraph 10.4(3) "a"(4); ~~and~~

h. Be licensed in a jurisdiction outside the United States or Canada and present evidence that any licenses held in any jurisdiction are unrestricted; and

i. The applicant's license is not denied by the board due to the commission of a disqualifying offense, as provided in 653—subrule 9.3(3).

ITEM 4. Amend subrule 10.5(2) as follows:

**10.5(2)** ~~Eligibility for a temporary~~ Temporary license eligibility. To be eligible for a temporary license, an applicant shall meet all of the following requirements:

a. to e. No change.

f. Present a letter justifying the need for temporary licensure from the organization or individual seeking the applicant's participation in a board-approved activity;

g. The applicant's license is not denied by the board due to the commission of a disqualifying offense, as provided in 653—subrule 9.3(3).

ITEM 5. Amend subrule 17.4(1) as follows:

**17.4(1) *Eligibility requirements.*** To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

a. to e. No change.

f. The applicant's license is not denied by the board due to the commission of a disqualifying offense, as provided in 653—subrule 9.3(3).

ITEM 6. Amend rule 653—20.6(148H) as follows:

**653—20.6(148H) Qualifications for licensure.**

**20.6(1) and 20.6(2)** No change.

**20.6(3)** The board may deny an applicant a license due to the commission of a disqualifying offense, as provided in 653—subrule 9.3(3).

ITEM 7. Amend rule 653—20.20(147,148H,272C) as follows:

**653—20.20(147,148H,272C) Grounds for discipline of genetic counselors.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148H, or 272C or the rules promulgated thereunder. These grounds for discipline apply to genetic counselors. This rule is not subject to waiver pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1) when the board determines that the licensee is guilty of any of the following acts or offenses:

**20.20(1)** Violating any of the grounds for revocation or suspension of a license as listed in Iowa Code section 147.55, 148H.7, ~~or 272C.10,~~ or 272C.15.

**20.20(2) to 20.20(34)** No change.

ITEM 8. Amend rule 653—23.1(272C) as follows:

**653—23.1(272C) Grounds for discipline.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, ~~or 272C or 2008 Iowa Acts, Senate File 2428, division H, or 272D~~ or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver ~~or variance~~ pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), 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:

**23.1(1)** Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 147.55, 148.6, 148E.8, ~~or 272C.10,~~ or 272C.15.

**23.1(2) to 23.1(48)** No change.

This rule is intended to implement Iowa Code chapters 17A, 147, 148 ~~and~~, 272C and ~~2008 Iowa Acts, Senate File 2428, division H~~ 272D.

ITEM 9. Amend rule 653—25.25(272C) as follows:

**653—25.25(272C) Disciplinary sanctions.**

**25.25(1) and 25.25(2)** No change.

**25.25(3)** Notwithstanding subrule 25.25(1), pursuant to Iowa Code section 272C.15, the board may only revoke or suspend a license for the commission of a crime if the offense directly relates to the duties and responsibilities of the profession, as defined in 653—paragraph 9.3(3) “a.”

[Filed 6/2/21, effective 8/18/21]

[Published 7/14/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/21.