

**NURSING BOARD[655]**

**Adopted and Filed**

**Rule making related to discipline**

The Board of Nursing hereby rescinds Chapter 4, “Discipline,” Iowa Administrative Code, and adopts a new Chapter 4 with the same title.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 147.55, 152.10, and 272C.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 17A, 147, 152, and 272C.

*Purpose and Summary*

Chapter 4 governs the disciplinary process for advanced registered nurse practitioners (ARNPs), registered nurses (RNs), and licensed practical nurses (LPNs) licensed by the Board. Pursuant to Iowa Code section 17A.7, each agency must conduct a comprehensive review of its rules on a five-year basis. The Board therefore reviewed Chapter 4 as part of its five-year review of its rules and now adopts a number of changes to make the chapter easier to read and align with the provisions of other similar licensing boards. These changes include adding headings or titles to subrules, explaining the nature of confidential letters, and explaining the available sanctions. Changes to the disciplinary grounds include adding attempted misappropriation of medications; adding participation in a sexual, emotional, social, or business relationship with a patient; removing the reference to prescription “blanks” to account for e-prescribing; and updating citations of Iowa Code sections that have been renumbered.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 17, 2021, as **ARC 6049C**. A public hearing was held on December 7, 2021, at 1 p.m. at the Board’s Office, Suite B, 400 S.W. Eighth Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Board on January 19, 2022.

*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, pursuant to 655—Chapter 15.

*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 March 30, 2022.

The following rule-making action is adopted:

Rescind 655—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4  
DISCIPLINE

**655—4.1(17A,147,152,272C) Board authority.** The board may discipline a licensee pursuant to Iowa Code chapters 147, 152, 272C, and 272D and rules promulgated thereunder.

**655—4.2(17A,147,152,272C) Complaints and investigations.**

**4.2(1) General.** Upon receipt of a written complaint or upon its own motion pursuant to other information received by the board, the board may review and investigate alleged acts or omissions that may violate the board's rules or that are related to the ethical or professional conduct of a licensee. The board may also determine that a complaint does not warrant an investigation.

**4.2(2) Confidentiality of investigative files.** Complaint files, investigation files, and all other investigation reports and investigation information in the possession of the board, including any employees or agents of the board, that relate to licensee discipline are confidential pursuant to Iowa Code section 272C.6(4).

**4.2(3) Investigation.** In order to determine whether disciplinary action is warranted, the executive director or a board investigator may conduct an investigation into the allegations of a complaint. Upon completion of an investigation, the investigator shall prepare a report for the board's consideration. The report may contain evidence gathered by the investigator, findings made by the investigator, the licensee's response to the allegations, and the potential laws or rules alleged to have been violated.

**655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas.** The board has the authority to issue investigatory subpoenas pursuant to Iowa Code section 17A.13.

**4.3(1) Scope of subpoena.** 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 any other real evidence necessary for the board to determine whether it should institute a contested case proceeding.

**4.3(2) Content of request.** 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) Additional requirements for subpoenas for mental health records.** In the case of a subpoena for mental health records, a written request for a subpoena or the executive director's written memorandum in support of the issuance of the subpoena shall, in addition to the requirements of subrule 4.3(2), set forth sufficient facts to establish the following:

- 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(4) Contents of subpoena.** Each issued 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; and
- g. A return of service.

**4.3(5) Motion to quash.** 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(6) Ruling on motion.** 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(7) Appeal of an administrative law judge ruling.** 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(8) Judicial review.** 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:

- a. The person is notified that the investigation has been concluded with no formal action; or
- b. There is a final decision in the contested case.

**655—4.4(17A,147,152,272C) Board action.** When reviewing complaints and investigative material, the board shall do one of the following:

**4.4(1)** Close the case without further action.

**4.4(2)** Close the case and issue the licensee a confidential letter of warning or letter of education. The purpose of confidential letters of warning and letters of education is to alert the licensee to possible violations of Iowa law or board rules so the licensee may address any issues. Confidential letters of warning and letters of education do not constitute formal disciplinary action and are not open for inspection under Iowa Code chapter 22. The board shall maintain a copy of confidential letters of warning and letters of education in the confidential investigative file regarding the licensee. Confidential letters of warning and letters of education may be used as evidence against a licensee in future contested case hearings before the board.

**4.4(3)** Request further investigation, including obtaining a peer review.

**4.4(4)** Determine the existence of probable cause and issue a notice of hearing and statement of charges or approve a combined statement of charges and settlement agreement.

**655—4.5(17A,147,152,272C) Peer review committee.** Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

**4.5(1) *Contract and case referral.*** The board shall enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

**4.5(2) *Written report.*** Peer reviewers shall review the information provided and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing and the rationale supporting the opinion.

**4.5(3) *Confidentiality.*** Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

**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 or license renewal as a registered nurse, licensed practical nurse, or 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 advanced registered nurse practitioner.

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

**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.

*g.* Failure to meet the standards as defined in 655—Chapter 7.

*h.* 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.

**4.6(4)** In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public 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.* 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.
  - h.* Violating the confidentiality or privacy rights of the patient or client.
  - i.* Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation, or economic or social status.
  - j.* Failing to assess, accurately document, evaluate, or report the status of a patient or client.
  - k.* Misappropriating or attempting to misappropriate medications, property, supplies, or equipment of the patient, client, or agency.
  - l.* Fraudulently or inappropriately using or permitting the use of prescriptions, obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.
  - m.* Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs or while impaired by the use of pharmacological agents or medications, even if legitimately prescribed.
  - n.* Being involved in the unauthorized manufacture or distribution of a controlled substance.
  - o.* Being involved in the unauthorized possession or use of a controlled substance.
  - p.* Engaging in behavior that is contradictory to professional decorum.
  - q.* Failing to report suspected wrongful acts or omissions committed by a licensee of the board.
  - r.* Failing to comply with an order of the board.
  - s.* For an advanced registered nurse practitioner, prescribing, dispensing, administering, or distributing drugs:
    - (1) In an unsafe manner.
    - (2) Without accurately documenting it or without assessing, evaluating, or instructing the patient or client.
    - (3) To individuals who are not patients or who are outside of the licensee's specialty area.
  - t.* Engaging in repeated verbal or physical conduct that interferes with another health care worker's performance or creates an intimidating, hostile, or offensive work environment.
  - u.* Failing to properly safeguard or secure medications.
  - v.* Failing to properly document or perform medication wastage.
- 4.6(5)** For purposes of this subrule, "patient" is defined to include the patient and the patient's family or caretakers who are present with the patient while the patient is under the care of the licensee. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following professional boundaries violations:
- a.* Sexual contact with a patient, regardless of patient consent.
  - b.* Making lewd, suggestive, demeaning, or otherwise sexual comments, regardless of patient consent.
  - c.* Participating in, initiating, or attempting to initiate a sexual, emotional, social, or business relationship with a patient, regardless of patient consent.
  - d.* Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.
  - e.* Repeatedly divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.
  - f.* Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.
- 4.6(6)** In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs may include, but need not be limited to, the following:
- a.* Excessive use of alcohol which may impair a licensee's ability to practice the profession with reasonable skill and safety.

*b.* Excessive use of drugs which may impair a licensee's ability to practice the profession with reasonable skill and safety.

**4.6(7)** Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

**4.6(8)** In accordance with Iowa Code section 147.55(5), fraud in representation as to skill or ability.

**4.6(9)** In accordance with Iowa Code section 147.55(6), use of untruthful or improbable statements in advertisements.

**4.6(10)** In accordance with Iowa Code section 147.55(7), willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

**4.6(11)** In accordance with Iowa Code section 147.55(8), other acts or offenses as specified by board rule, including the following:

*a.* Failing to provide written notification of a change of address to the board within 30 days of the event.

*b.* 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.

*c.* Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.

*d.* 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.

*e.* Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions within the time period provided.

*f.* Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions within the time period provided.

*g.* Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 655—subrule 7.4(5) or exceptions within the time period provided.

*h.* Failing to respond to or comply with a board investigation or subpoena.

*i.* Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.

*j.* Violating an initial agreement or contract with the Iowa nurse assistance program committee.

**4.6(12)** In accordance with Iowa Code section 147.2 or 147.10:

*a.* Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact.

*b.* Engaging in the practice of nursing in Iowa on an inactive license.

**4.6(13)** In accordance with Iowa Code section 152.10(2):

*a.* Continuing to practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare without taking precautions to meet the current standard of care.

*b.* Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority of another state, territory, or country.

*c.* Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section

152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.

*d.* Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

*e.* Being adjudicated 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.

*f.* Being unable to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

**655—4.7(17A,147,152,272C) Sanctions.**

**4.7(1)** A sanction is a disciplinary action by the board which resolves a contested case.

**4.7(2)** The board may impose one or more of the following sanctions:

*a.* Revocation of a license.

*b.* Suspension of a license until further order of the board or for a specified period.

*c.* Nonrenewal of a license.

*d.* Restriction on engaging in specified nursing procedures, methods, settings, or acts.

*e.* Probation.

*f.* Additional education or training, reexamination, or both.

*g.* Physical, mental, or substance abuse evaluation, alcohol or drug screening, or clinical competency evaluation.

*h.* Civil penalty. Assessment of a fine shall be specified in the order and may not exceed a maximum amount of \$1,000.

*i.* Citation and warning.

*j.* Such other sanctions allowed by law as may be appropriate.

**655—4.8(17A,147,152,272C) Voluntary surrender.** A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation. A voluntary surrender of a license during the pendency of a complaint or investigation shall be considered discipline and shall have the same force and effect as an order of revocation.

**655—4.9(17A,147,152,272C) Prohibited grounds for discipline.** The board shall not suspend or revoke the license of a person who is in default or is delinquent on repayment of a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

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