

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rulemaking related to plumbing and mechanical systems licensee discipline and providing an opportunity for public comment

The Department of Inspections, Appeals, and Licensing hereby proposes to rescind Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 105.4 and 272C.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 105 and 272C.

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 32 and implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (January 10, 2023). This rulemaking sets forth the grounds for discipline, sets forth methods of discipline and factors the Board of Plumbing and Mechanical Systems may consider in determining the nature and severity of the disciplinary sanction to be imposed, provides for the imposition of civil penalties, and sets forth procedures for the appeal of disciplinary action and collection of civil penalties. This is important to both the public and licensees because it creates a shared understanding of what is and is not appropriate for these licensed individuals and procedures upon the identification of noncompliance.

No public comments were received on the published Regulatory Analysis for this chapter (IAB 11/1/23). Only technical citation revisions were made to the proposed chapter after publication of the Regulatory Analysis.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024 9:20 a.m.	6200 Park Avenue Des Moines, Iowa
January 31, 2024 9:20 a.m.	6200 Park Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

The following rulemaking action is proposed:

ITEM 1. Rescind 641—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32

PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE DISCIPLINE

641—32.1(105,272C) Definitions. The definitions set forth in Iowa Code section 105.2 are incorporated herein by reference. For purposes of this chapter, the following definitions also apply:

“*Conviction*” means the same as defined in 641—Chapter 29.

“*Directly relates*” or “*directly related*” means the same as Iowa Code section 272C.1(8) “*a*” and “*b*.”

“*Discipline*” means any sanction the board may impose upon licensees.

“*Disqualifying conviction*” or “*disqualifying offense*” means the same as in 641—Chapter 29.

“*Lapsed license*” means a license that has expired. A lapsed license is no longer valid for practice.

“*Licensee*” means any person licensed to practice pursuant to Iowa Code chapter 105.

641—32.2(105,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 641—32.3(105,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

32.2(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 in this state, which includes the following:

a. 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

b. Attempting to file or filing with the board or the department of inspections, appeals, and licensing any false or forged diploma, certificate, affidavit, identification or qualification in making an application for a license in this state.

32.2(2) Professional incompetence. Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the applicable licensed trade.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by others licensed in the applicable trade in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in the applicable trade in this state.

e. Inability to practice in the trade with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

32.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

32.2(4) Habitual intoxication or addiction to the use of drugs.

32.2(5) Conviction of a disqualifying offense in the courts of this state or another state, territory, or country. A file-stamped copy of the final order or judgment or conviction or plea of guilty in this state or another state, territory, or country constitutes conclusive evidence of the conviction.

32.2(6) Fraud in representations as to skill or ability.

32.2(7) Use of untruthful or improbable statements in advertisements.

32.2(8) Willful or repeated violations of Iowa Code chapter 105 or 272C.

32.2(9) Violation of a board rule.

32.2(10) Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 481—Chapter 8.

32.2(11) Permitting another person to use the licensee's wall certificate, wallet card, or license number for any purpose.

32.2(12) Failure to timely submit the requested materials in response to a compliance review conducted pursuant to 641—30.5(105).

32.2(13) Failure to meet the continuing education requirements for licensure.

32.2(14) Submission of a false report of continuing education.

32.2(15) Failure to pay any outstanding fees or costs owed to the board.

32.2(16) Acceptance of any fee by fraud or misrepresentation.

32.2(17) Negligence by the licensee in the practice of the trade. Negligence by the licensee in the practice of the trade includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions which impair the ability to safely and skillfully practice the trade.

32.2(18) Violation of a law, ordinance, or regulation of this state, or a political subdivision therein, another state, or the United States, which relates to the practice of the profession.

32.2(19) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court does not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report will be expunged from the records of the board.

32.2(20) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice in the trade in another state, district, territory, or country.

32.2(21) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

32.2(22) Failure to notify the board within 30 days after the occurrence of any judgment entered on or settlement of a claim or action related to the profession.

32.2(23) Engaging in any conduct that subverts or attempts to subvert a board investigation.

32.2(24) Failure to comply with a subpoena issued by the board or otherwise fail to cooperate with an investigation of the board.

32.2(25) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

32.2(26) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

32.2(27) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice a trade included in Iowa Code chapter 105.

32.2(28) Failure to report a change in name or address within 30 days after it occurs.

32.2(29) Representing oneself as a licensed tradesperson when one's license has been suspended or revoked or when the license is on inactive status.

32.2(30) Permitting another person to use the licensee's license for any purpose.

32.2(31) Permitting an unlicensed employee or person under the licensee's control to perform activities necessitating a license.

32.2(32) Failure to apply and obtain a permit prior to performing work, if mandated by the state or a political subdivision therein.

32.2(33) Failure to pay all inspection fees, if required by the state or a political subdivision therein.

32.2(34) Failure to pay a permit fee, if required by the state or a political subdivision therein.

32.2(35) Practice outside the scope of the license, which includes, but is not limited to:

- a. Practicing as a journeyman without the supervision of a master.
- b. Practicing in a trade for which the licensee does not hold a board-issued license.
- c. Contracting for plumbing or mechanical work in the state of Iowa without a board-issued contractor license.

32.2(36) Practicing on a lapsed license.

32.2(37) Practicing as a contractor without valid bonding or insurance, as mandated by Iowa Code section 105.19.

641—32.3(105,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

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

641—32.4(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 serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

641—32.5(105) Civil penalties—unlicensed penalties. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 105.27(1). In addition to the procedures set forth in Iowa Code chapters 105 and 272C, this chapter applies.

32.5(1) *Unlawful practices.* Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

- a.* Acts or practices by unlicensed persons which necessitate licensure to install or repair plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems under Iowa Code chapter 105.
- b.* Acts or practices by unlicensed persons which necessitate certification to install or repair medical gas piping systems under Iowa Code chapter 105.
- c.* Engaging in the business of designing, installing, or repairing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems without employing a licensed master.
- d.* Providing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems services on a contractual basis.
- e.* Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- f.* Falsely impersonating a person licensed under Iowa Code chapter 105.
- g.* Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- h.* Other violations of Iowa Code chapter 105.
- i.* Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

32.5(2) *Investigations.* The board is authorized by Iowa Code section 17A.13(1) and chapters 105 and 272C to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

32.5(3) *Subpoenas.* Pursuant to Iowa Code section 17A.13(1) and chapter 105, the board is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 641—34.5(105).

32.5(4) *Notice of intent to impose civil penalties.* Notice of the board's intent to order compliance with Iowa Code chapter 105 and impose a civil penalty will be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

- a.* A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty and the nature of the intended order.
- e.* Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.

f. The address to which written request for hearing must be made.

32.5(5) Requests for hearings.

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, or if the nonlicensee waives in writing the right to hearing and agrees to pay the penalty, the board chairperson, the chairperson's designee, or the board executive may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

c. If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. Subsequent to the issuance of a notice of hearing under this subrule, the settlement agreement provisions of 641—33.23(272C) apply.

e. The notice of intent to issue an order and the order are public records pursuant to Iowa Code chapter 22. Copies may be published. Hearings are open to the public.

32.5(6) Factors for board consideration. The board may consider the following when determining the amount of civil penalty to impose, if any:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to or resulting in the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The welfare or best interest of the public.

32.5(7) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement.

32.5(8) Judicial review.

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board will notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 105.27(4).

641—32.6(105,272C) Collection of delinquent civil penalties and discipline-related debts.

32.6(1) The board may participate in an income setoff program administered by the department of revenue in accordance with Iowa Code section 421.65 and rules promulgated thereunder.

32.6(2) Definitions. For purposes of this rule, the following definitions apply:

“*Debtor*” means any person who owes a debt to the board as a result of a proceeding in which notice and opportunity to be heard was afforded.

“*Income offset program*” means the program established in Iowa Code section 421.65 and any rules promulgated thereunder through which the department of revenue coordinates with state agencies to satisfy liabilities owed to those state agencies.

32.6(3) The board office may provide the department of administrative services a liability file containing pertinent information for the identification of the debtor and liability, including if the status of a debt changes due to payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

32.6(4) Due diligence.

a. Before submitting debtor information to the outstanding liability file, the board office will make a good faith attempt to collect from the debtor. Such attempt will include at least all of the following:

- (1) A telephone call requesting payment.
- (2) An initial letter to the debtor's last discernible address requesting payment within 15 days.
- (3) A second letter to the debtor's last discernible address requesting payment within ten days.

b. The board office will document due diligence and retain such documentation.

32.6(5) Notification of offset. Within ten calendar days of receiving notification from the department of revenue that the debtor is entitled to a payment subject to the setoff program, the board office will:

a. Send a preoffset notice to the debtor. The preoffset notice will inform the debtor of the amount the department intends to claim, including all of the following information:

- (1) The board's right to the payment in question.
- (2) The board's right to recover the payment through the setoff procedure.
- (3) The basis of the board's case in regard to the debt.
- (4) The right of the debtor to request, in accordance with subrule 32.6(6) and within 15 days of the mailing of the preoffset notice, a split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

(5) The debtor's right to appeal the offset, in accordance with subrule 32.6(7) and within 15 days of the mailing of the preoffset notice, and the procedure to follow in that appeal.

(6) The board office's contact information in case of questions.

b. Notify the department of revenue that the preoffset notice has been sent to the debtor, and supply a copy of the preoffset notice to the department of revenue.

32.6(6) Request to divide a jointly or commonly owned right to payment.

a. A debtor who receives a preoffset notice may request release of a joint or common owner's share, if the request is received by the board within 15 days of the date the preoffset notice is mailed.

b. In conjunction with such a request, the debtor shall provide to the board the full name and social security number of any joint or common owner.

c. Upon receipt of such a request, the board office will notify the department of revenue of the request.

32.6(7) Appeal process. A debtor who receives a preoffset notice may request an appeal of the underlying debt within 15 days of the date the preoffset notice is mailed. A contested case appeal will be conducted pursuant to 641—Chapter 33. The board will notify the department of revenue within 45 days of the notification of setoff. The board will hold a payment in abeyance until the final disposition of the contested liability or setoff.

32.6(8) Once any setoff has been completed, the board office will notify the debtor of the action taken and what balance, if any, remains owing to the board.

These rules are intended to implement Iowa Code chapters 105 and 272C.