

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Notice of Intended Action

**Proposing rulemaking related to investigatory subpoenas
and providing an opportunity for public comment**

The Professional Licensing and Regulation Bureau hereby proposes to rescind Chapter 6, “Investigatory Subpoenas,” 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 chapters 17A and 272C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 272C, 542, 542B, 543B, 543D, 544A, 544B and 544C.

Purpose and Summary

This proposed rulemaking provides the public and licensees with information about the professional licensing boards’ investigatory subpoena authority and procedures. The boards utilize investigatory subpoenas to gather information and investigate allegations against a licensee reported to the board.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

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 of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 14, 2024. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Public Hearing

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

February 13, 2024
11:30 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa
Video call link: meet.google.com/zuu-vunu-dcc

February 14, 2024
11:30 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa
Video call link: meet.google.com/zuu-vunu-dcc

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 193—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
INVESTIGATORY SUBPOENAS

193—6.1(17A,272C,542,542B,543B,543D,544A,544B,544C) Investigatory subpoena authority. Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), professional licensing boards, as defined in 191—Chapter 1, have the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records that are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law. To ensure consistency in procedure, all boards will issue investigatory subpoenas according to the uniform procedures set forth in rule 193—6.2(17A,272C,542,542B,543B,543D,544A,544B,544C). Given the range of investigative options otherwise utilized by each board, additional detail on investigative procedures is provided separately in each board's individual rules.

193—6.2(17A,272C,542,542B,543B,543D,544A,544B,544C) Investigatory subpoena procedures.

6.2(1) The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence that the officer determines 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 need to 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. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

6.2(2) A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena will 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 the reasons that 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 6.2(1) have been satisfied.

6.2(3) Each subpoena will 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 needs to be filed;
- e. The signature, address and telephone number of the executive officer or designee;
- f. The date of issuance;
- g. A return of service.

6.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena needs to file a motion with the board to quash or modify the subpoena within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days. The motion will describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

6.2(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

6.2(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling needs to appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions provided that all of the time frames are reduced by one-half.

6.2(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.

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, 542B, 543B, 543D, 544A, 544B, and 544C.