

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt Chapter 34, “Plumbing and Mechanical Systems Board—Complaints and Investigations,” Iowa Administrative Code.

The rules in Chapter 34 describe how to submit a complaint to the Iowa Plumbing and Mechanical Systems Board. The rules also detail how an investigation will be conducted and how the review process will proceed.

Consideration will be given to all written suggestions or comments on the proposed rules on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to choulson@idph.state.ia.us.

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library
529 Pierce Street
Sioux City

Public Library
400 Willow Avenue
Council Bluffs

Public Library, Meeting Room C
415 Commercial Street
Waterloo

Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa

Public Library Information Ctr., Kelinson Rm.
2950 Learning Campus Drive
Bettendorf

Hoover State Office Building, First Floor
1305 East Walnut
Des Moines

Iowa Western Community College – 2
923 East Washington
Clarinda

Mason City National Guard Armory
1160 19th Street SW
Mason City

Crestwood High School
1000 4th Avenue East
Cresco

Archdiocesan Pastoral Center
1229 Mount Loretta
Dubuque

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

Prairie Lakes Area Education Agency
1 Triton Circle, Library Bldg.
Fort Dodge

Kirkwood Community College
Room 117
1816 Lower Muscatine Road
Iowa City

Burlington High School
421 Terrace Drive
Burlington

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

These rules are intended to implement Iowa Code chapter 105.
The following amendment is proposed.

Adopt the following new 641—Chapter 34:

CHAPTER 34

PLUMBING AND MECHANICAL SYSTEMS BOARD—COMPLAINTS AND INVESTIGATIONS

641—34.1(272C) Complaints.

34.1(1) A complaint shall be made in writing and shall be mailed or delivered to the Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. The complaint shall include the name and address of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated upon the board's own motion pursuant to evidence received by the board. Timely filing of complaints is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

34.1(2) A person shall not be civilly liable as a result of filing a complaint with the board, or for disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with the duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

641—34.2(272C) Report of malpractice claims or actions or disciplinary actions. Each licensee shall submit a copy of any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

641—34.3(272C) Report of acts or omissions. Each licensee with first-hand knowledge of acts or omissions in violation of statute or the board's administrative rules shall report to the board those acts or omissions when committed by another person licensed to practice by the board. The report shall include the name and address of the licensee and the date, time, and place of the incident.

641—34.4(272C) Investigation of complaints or reports. The chairperson of the board may assign an investigation of a complaint or report to a member of the board or to an investigator. The investigating board member or the investigator may request information from any peer review committee which may be established to assist the board. The investigating board member or investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. A board member who has personally investigated a complaint is disqualified from participating in any contested case proceeding resulting from the investigation.

641—34.5(17A,272C) Issuance of investigatory subpoenas.

34.5(1) The board executive officer or designee may, upon the written request of a board investigator or on the executive officer's own initiative, subpoena books, papers, records, and other real evidence which are necessary for the board to decide whether to initiate a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall 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. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

34.5(2) A written request for a subpoena or the executive officer'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 initiate a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 34.5(1) have been satisfied.

34.5(3) Each subpoena shall contain:

- 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 board executive officer or designee;
- f. The date of issuance;
- g. A return of service.

34.5(4) 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.

34.5(5) 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.

34.5(6) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board executive officer, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

34.5(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 the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

641—34.6(272C) Peer review committees.

34.6(1) A complaint may be assigned to a peer review committee for review, investigation, or report to the board.

34.6(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, or report to the board.

34.6(3) Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

34.6(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

641—34.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the

committee appearance, the licensee further waives any objection to the board executive officer assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.