Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 580
"Dental Board Complaints and Investigations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147.76, 153.33 and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A and sections 153.33, 272C.3 and 272C.4

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 22, 2024 12 noon	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/nuk-xcby-nyf Or dial: 541.838.0234 PIN: 917 400 078#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

This proposed rulemaking promulgates Chapter 580 and implements Iowa Code chapters 147 and 153 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code sections 147.76 and 153.33 provide that rulemaking authority.

This rulemaking implements Iowa Code chapter 17A and sections 153.33, 272C.3 and 272C.4 by ensuring the public and licensees are aware of the complaint and investigation process and understand their rights and responsibilities during this process. This chapter sets forth information regarding complaints and investigations against licensees. The chapter also provides information regarding the process for submitting a complaint, reporting requirements for licensees, information on the investigative process, information regarding the issuance of investigatory subpoenas, peer review committees, and Dental Board appearances.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There is no direct cost to the public. There is a cost to licensees in the form of licensing application and renewal fees (as described in other chapters), which in turn gives the Board the ability to hire staff that investigate cases.

- Classes of persons that will benefit from the proposed rulemaking:

These rules provide the public and licensees with information to ensure that they understand their responsibilities and rights around complaints and investigations. This chapter provides licensees with needed information about the process, enabling them to make reports if necessary and understand how to address the receipt of a subpoena for records. The investigative process permits the Board to gather needed information to determine whether a violation has occurred. This is the primary mechanism boards have to protect the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no direct cost to the public. There is a cost to licensees in the form of licensing application and renewal fees (as described in other chapters), which in turn gives the Board the ability to hire staff that investigate cases.

- Qualitative description of impact:

The Board believes that the costs are justified by the benefits achieved. The purpose of investigations and complaints is to address allegations against licensees, enabling the Board to make informed decisions regarding that licensee. Eliminating complaints and investigations would cause harm to the public by allowing licensees' negative actions to go unchecked.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, including complaints and investigations. The time needed to manage this provision is generally in the form of written and verbal correspondence with licensees, complainants and other pertinent parties; issuing subpoenas; gathering records; conducting interviews as needed; and authoring investigative reports. There is 1.0 full-time equivalent (FTE) position assigned to investigate complaints, with support from executive officers and administrative staff. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The purpose of investigations and complaints is to address allegations against licensees, enabling the Board to make informed decisions regarding that licensee. Eliminating complaints and investigations would cause harm to the public by allowing licensees' negative actions to go unchecked.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all licensing boards. Through the state government realignment, 31 boards were moved under the Licensing Division within the Department. This provides a greater opportunity to assess the manner in which each board operates and to identify best practices. Through this process, the Department has identified that there are differences in the way the boards operate. Discrepancies are being discussed, with a focus on consistency and best practice, which may assist with identifying less restrictive alternatives in the future.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified a less restrictive alternative to the complaints and investigative process that Iowa follows. The process is similar in most states. The Board believes this process ensures public safety and ensures that a minimum competency of care is provided to Iowans.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The licensing boards' ultimate goal is ensuring public safety and welfare. The purpose of this rulemaking is to allow a method for the public to bring complaints against licensed professionals and allow the boards to investigate complaints. The boards need the ability to investigate complaints, gather information and make informed decisions on whether a rule has been violated. Without this process, acts detrimental to the public will go unchecked and ultimately harm the public.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules relate to high-stakes public safety concerns that are present whether the business is a small business or a large corporation. While some dental professionals may work in a smaller dental office, some also work for large corporations, hospitals, and other dental facilities. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 580:

CHAPTER 580
DENTAL BOARD COMPLAINTS AND INVESTIGATIONS

481—580.1(147,153,272C) Complaint review. Pursuant to Iowa Code sections 147.87, 153.33, 272C.3 and 272C.4, the board shall, upon receipt of a complaint or upon its own motion, review and investigate alleged acts or omissions that the board reasonably believes constitute cause under applicable law or administrative rule for licensee or registrant discipline. Pursuant to Iowa Code section 153.33A, all complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee.

481—580.2(153) Form, content and submission of complaints.

580.2(1) Complaints should be filed with department staff associated with the board. Complaints may be filed via the board's online database or via complaint form by email, by fax, by mail, or in person. Contact information for the board is available on the department's website.

580.2(2) A written complaint should include the following facts:

a. The full name and contact information of the complainant.

b. The full name, address, or contact information of the licensee or registrant against whom the complaint is filed.

c. A statement of the facts concerning the alleged acts or omissions.

481—580.3(153) Investigation. Pursuant to Iowa Code sections 147.87, 147.88, 153.33, 272C.3 and 272C.4, the board may authorize department staff to investigate the allegations of a complaint to determine whether probable cause exists.

481—580.4(17A,153,272C) Investigatory subpoenas. Pursuant to Iowa Code sections 17A.13(1), 153.33(3)*"d"* and 272C.6(3), the board has the authority to issue an investigatory subpoena to compel the production of evidence deemed necessary in connection with the investigation of a complaint. A subpoena issued by the board in connection with such investigation may compel the production of evidence whether or not it is privileged or confidential under law. The board may not compel the types of evidence stipulated in Iowa Code section 272C.6(3)*"a"*(2).

580.4(1) The executive director or designee may, upon the written request of a board investigator or on the director's own initiative, issue a subpoena in accordance with Iowa Code sections 17A.13(1), 153.33(3)*"d"* and 272C.6(3). In the case of a subpoena, when seeking access to mental health records, all 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.

580.4(2) A written request for a subpoena or the director's written memorandum in support of the issuance of a subpoena shall contain all of 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 580.4(1) have been satisfied.

580.4(3) Each subpoena shall contain all of 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 contact information of the executive director or designee who issued the subpoena;

f. The date of issuance; and

g. A return of service attached to the subpoena.

580.4(4) Any person who is aggrieved or adversely affected by compliance with 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.

580.4(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may conduct a hearing on the matter and issue a decision, or refer such hearing and decision to an administrative law judge to conduct a hearing and issue a decision.

a. Oral argument may be scheduled at the discretion of the board or the administrative law judge.

b. Following the conclusion of such hearing, the board or administrative law judge shall 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.

580.4(6) 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 a notice of appeal within ten days of the date of service of the decision of the administrative law judge on the executive director, either in person or by certified mail.

580.4(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 the person is notified the investigation has been concluded with no formal action, or there is a final decision in the contested case.

481—580.5(153) Board appearances. The board may request a licensee or registrant to appear before the board to discuss a pending investigation. By electing to participate in the board appearance, the licensee or registrant waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds of a personal investigation and a combination of investigative and adjudicative functions. If the executive director or designee participates in the appearance, the licensee or registrant further waives any objection to having the executive director or designee assist the board in the contested case proceeding.

481—580.6(153) Peer review. Pursuant to Iowa Code section 272C.3(1)*"i,"* the board may refer a complaint for peer review, investigation and report by another licensee, another registrant or a committee established by the board for such purpose.

580.6(1) The board shall determine which licensee, registrant, or peer review committee will review a case involving a dentist or dental assistant. The dental hygiene committee shall make such determinations in a case involving a dental hygienist. Peer reports and recommendations will be forwarded to the dental hygiene committee for further review and decision making.

580.6(2) The board or dental hygiene committee may request that the Iowa dental association, the Iowa dental hygienists' association and the Iowa dental assistants association assist in the composition of a peer review committee as needed.

580.6(3) Pursuant to Iowa Code sections 147.135, 272C.8 and 272C.9 and rule 481—580.11(147,272C), licensees or registrants who serve as peer reviewers shall not be liable for acts, omissions or decisions made in connection with such service.

481—580.7(272C) Duties of peer review committees.

580.7(1) A licensee or registrant who serves as a peer reviewer shall comply with the requirements imposed by Iowa Code sections 22.7 and 272C.6 and rule 481—580.9(272C).

580.7(2) The board may provide investigative and related services to designated peer reviewers.

580.7(3) Designated peer reviewers shall thoroughly investigate a complaint as assigned and provide a written report to the board in accordance with the board's direction. The peer review shall comply with all of the following:

a. Include a peer review report that contains a statement of facts and a recommendation as to whether a violation of the standard of care occurred, with consideration given to relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

b. Include in the report the signature of each peer reviewer that participated in the investigation. In the case of dissension by a peer reviewer, the dissension should be noted in the report.

c. Submit the peer review report and all investigative information to the board upon completion.

481—580.8(272C) Board review. The board shall review all investigative reports and proceed pursuant to 481—Chapter 506.

481—580.9(272C) Confidentiality of investigative files.

580.9(1) Complaint and investigation files, all other investigation reports and all other information in the possession of the board or peer reviewers acting under the authority of the board, its employees or its agents that relate to licensee or registrant discipline shall be subject to all of the following:

a. Are privileged and confidential;

b. Are not subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee or registrant and the board, its employees and its agents that are involved in licensee or registrant discipline; and

c. Are not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee or registrant discipline.

580.9(2) A final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

481—580.10(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers, licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

481—580.11(147,272C) Immunities.

580.11(1) Pursuant to Iowa Code sections 147.135, 272C.8 and 272C.6(3)*"b,"* a person shall not be civilly liable in relation to the following:

a. Filing a report or complaint with the board;

b. Disclosing to the board, its agents or employees, whether or not pursuant to a subpoena, records, documents, testimony or other forms of information that constitute privileged matter concerning a recipient of health care services or some other person;

c. Serving in connection with proceedings of a peer review; and

d. Serving in connection with other authorized duties of the board.

580.11(2) Immunity from civil liability shall not apply if the act is done with malice.

These rules are intended to implement Iowa Code chapter 17A and sections 153.33, 272C.3 and 272C.4.