Regulatory Analysis

Notice of Intended Action to be published: 653—Chapter 23
"Grounds for Discipline"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 272C

Public Hearing

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

November 5, 2024 9 a.m.	6200 Park Avenue Des Moines, Iowa Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides protection to Iowans because it publicly defines required professional standards for physicians. This is important to both the public and the licensee because it creates a shared understanding of what is and is not appropriate for licensees in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Medicine has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rule in this chapter is related to standards of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at $10,000 per public order.

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. Due to the higher number of complaints associated with this Board than with others, costs specific to managing complaints and investigations are more than other boards.

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.

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

This is important to both the public and the licensee because it creates a shared understanding of what is and is not appropriate for licensees in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against their license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

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:

The Board receives a higher number of complaints than many other boards and issues public discipline in approximately 5 percent of its cases. However, the Board also issues letters of warning or education in 10 to 15 percent of its cases. In 2022, the Board received 660 complaints and issued public discipline. Medicine is a very large profession at approximately 17,000 licensed individuals. The number of complaints filed indicate that there is public support for the work the Board conducts in its investigations. Health is one of the most important aspects of Iowans' lives, and they deserve competent professionals who can provide them with the best care possible.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. Inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

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, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. Due to the higher number of complaints associated with this Board than with others, costs specific to managing complaints and investigations are more than other boards.

Staff salaries to support the work of the Board are covered by the fund.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. 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.

Disciplinary fees collected under this authority go to the General Fund. In 2022, a total of $0 was paid into the General Fund by disciplinary fees assessed by the Board.

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

The Board receives a higher number of complaints than many other boards and issues public discipline in approximately 5 percent of its cases. However, the Board also issues letters of warning or education in 10 to 15 percent of its cases. In 2022, the Board received 660 complaints and issued public discipline. Medicine is a very large profession at approximately 17,000 licensed individuals.

The number of complaints filed indicate that there is public support for the work the Board conducts in its investigations. Health is one of the most important aspects of Iowans' lives, and they deserve competent professionals that can provide them the best care possible.

Even with the slightly higher costs associated with this Board, access to competent physicians is worth the costs to safeguard Iowans. The Board believes the costs associated with managing the disciplinary process and proceedings is necessary to ensure Iowans have safe practitioners and the public is aware of concerns with a licensee's practice.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners.

Due to the state government alignment, this Board is now part of the Department. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The updates to this chapter support this effort. The Department is actively pursuing a single licensing platform to assist in standardizing licensing.

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 public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners.

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

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners.

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 chapter relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for optometrists. While some physicians likely are running a small business of their own, some also work for large organizations, such as hospital systems. 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. Additionally, if a licensee subject to this chapter is a small business and has identified a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, the licensee could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 653—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
GROUNDS FOR DISCIPLINE

653—23.1(272C) Grounds for discipline. The board has the authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 148H, 252J, 272C or 272D or the rules promulgated thereunder. The grounds for discipline apply to physicians, acupuncturists and genetic counselors. The board may impose any of the disciplinary sanctions set forth in 481—Chapter 506, including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

23.1(1) Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 147.55, 148.6, 148E.8, 148H.7, 272C.10, or 272C.15.

23.1(2) Professional incompetency. Professional incompetency includes but is not limited to any of the following:

a. Willful or repeated gross malpractice;

b. Willful or gross negligence;

c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the licensee's practice;

d. A substantial deviation by the licensee from the standards of learning or skill ordinarily possessed and applied by other physicians, acupuncturists or genetic counselors in the state of Iowa acting in the same or similar circumstances;

e. A failure by a physician, acupuncturist or genetic counselor to exercise in a substantial respect that degree of care that is ordinarily exercised by the average physician, acupuncturist or genetic counselor in the state of Iowa acting in the same or similar circumstances;

f. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice in the state of Iowa;

g. Failure to meet the acceptable and prevailing standard of care when delegating or supervising services provided by another physician, health care practitioner or individual who is collaborating with or acting as an agent, associate, or employee of the physician, acupuncturist or genetic counselor responsible for the patient's care, whether or not injury results.

23.1(3) Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes but is not limited to:

a. Failure to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician, acupuncturist or genetic counselor acting in the same or similar circumstances.

b. Practicing without reasonable skill and safety as a result of a mental or physical impairment, chemical abuse or chemical dependency.

c. For acupuncturists only: prescribing, dispensing or administering any controlled substance or prescription medication for human use or performing any treatment or healing procedure not authorized in Iowa Code chapter 148E or 653—Chapter 17.

23.1(4) Unprofessional conduct. Engaging in unethical or unprofessional conduct includes but is not limited to the committing by a licensee of an act contrary to honesty, justice or good morals,

whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or rule 653—13.7(147,148,272C), 653—13.20(147,148), 653—17.10(147,148E,272C) or 653—20.4(148H) as interpreted by the board.

23.1(5) Sexual misconduct. Engaging in sexual misconduct includes but is not limited to engaging in conduct set out at 653—subrule 13.7(4) or 13.7(6) as interpreted by the board.

23.1(6) Substance abuse. Substance abuse includes but is not limited to excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner that may impair a licensee's ability to practice the profession with reasonable skill and safety.

23.1(7) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose includes but is not limited to:

a. Self-prescribing or self-dispensing controlled substances.

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the licensee conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes the physician's spouse or domestic partner and either of the physician's, spouse's, or domestic partner's parents, stepparents or grandparents; the physician's natural or adopted children or stepchildren and any child's spouse, domestic partner or children; the siblings of the physician or the physician's spouse or domestic partner and the sibling's spouse or domestic partner; or anyone else living with the physician.

23.1(8) Physical or mental impairment. Physical or mental impairment includes but is not limited to any physical, neurological or mental condition that may impair a licensee's ability to practice the profession with reasonable skill and safety. Being adjudged mentally incompetent by a court of competent jurisdiction automatically suspends a license for the duration of the license unless the board orders otherwise.

23.1(9) Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction, as defined in Iowa Code section 148.6(2)*"b."* A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence of the felony conviction.

23.1(10) Violation of the laws or rules governing the practice of medicine, acupuncture or genetic counseling of this state; another state; the United States; or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine, acupuncture or genetic counseling includes but is not limited to willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E, 148H or 272C or other state or federal laws or rules governing the practice of medicine.

23.1(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

23.1(12) Violation of an initial agreement or health contract entered into with the Iowa professional health programs (IPHP).

23.1(13) Failure to comply with an evaluation order. Failure to comply with an order of the board requiring a licensee to submit to evaluation under Iowa Code section 148.6(2)*"h"* or 272C.9(1).

23.1(14) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes but is not limited to an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery or osteopathic medicine and surgery, by an acupuncturist, or by a genetic counselor.

23.1(15) 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 acupuncture,

medicine and surgery, osteopathic medicine and surgery, or genetic counseling in this state and includes false representations of 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 attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

23.1(16) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes but is not limited to a licensee's having made misleading, deceptive or untrue representations as to the acupuncturist's, physician's or genetic counselor's competency to perform professional services for which the licensee is not qualified to perform by education, training or experience.

23.1(17) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes but is not limited to an action by a licensee in making known to the public information or intention that is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements that may consist of but are not limited to:

a. Inflated or unjustified claims that lead to expectations of favorable results;

b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty of practice for which the licensee is not qualified;

c. Representations that are likely to cause the average person to misunderstand; or

d. Extravagant claims or claims of extraordinary skills not recognized by the profession.

23.1(18) Obtaining any fee by fraud or misrepresentation.

23.1(19) Acceptance of remuneration for referral of a patient to other health professionals in violation of the law or medical ethics.

23.1(20) Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

23.1(21) Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of acupuncture, medicine and surgery, or osteopathic medicine and surgery.

23.1(22) Failure to report disciplinary action. Failure to report a license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state; an agency of the United States government; or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority. 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, such report will be expunged from the records of the board.

23.1(23) Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of acupuncture, medicine and surgery, osteopathic medicine and surgery, or genetic counseling entered into with this state; another state; the United States; an agency of the federal government; or any country, territory or other jurisdiction.

23.1(24) Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

23.1(25) Failure to file the reports required by rule 653—22.2(272C) within 30 days concerning wrongful acts or omissions committed by another licensee.

23.1(26) Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6, 653—subrule 24.2(6), and 481—Chapter 506.

23.1(27) Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or drug or alcohol screening.

23.1(28) The inappropriate use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp that is adopted by the disabled person for all purposes requiring a signature and that is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

23.1(29) Maintaining any presigned prescription that is intended to be completed and issued at a later time.

23.1(30) Failure to comply with the recommendations issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the protocols established pursuant to Iowa Code chapter 139A.

23.1(31) Failure by a physician with HIV or HBV who practices in a hospital setting, and who performs exposure-prone procedures, to report the physician's HIV or HBV status to an expert review panel established by a hospital under Iowa Code section 139A.22(1) or to an expert review panel established by the department of health and human services under Iowa Code section 139A.22(3).

23.1(32) Failure by a physician with HIV or HBV who practices outside a hospital setting, and who performs exposure-prone procedures, to report the physician's HIV or HBV status to an expert review panel established by the department of health and human services under Iowa Code section 139A.22(3).

23.1(33) Failure by a physician subject to the reporting requirements of subrules 23.1(31) and 23.1(32) to comply with the recommendations of an expert review panel established by the department of health and human services pursuant to Iowa Code section 139A.22(3), with hospital protocols established pursuant to Iowa Code section 139A.22(1), or with health care facility procedures established pursuant to Iowa Code section 139A.22(2).

23.1(34) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

23.1(35) Fraud in the practice. Fraud in the practice includes but is not limited to any misleading, deceptive, untrue or fraudulent representation in the practice of acupuncture, medicine or surgery, or genetic counseling, made orally or in writing, that is contrary to the licensee's legal or equitable duty, trust, or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare, and potentially injurious to another. Proof of actual injury need not be established.

23.1(36) Improper management of medical records. Improper management of medical records includes but is not limited to failure to maintain timely, accurate, and complete medical records.

23.1(37) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

23.1(38) Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and rule 653—24.2(17A,147,148,272C).

23.1(39) Failure to comply with the direct billing requirements for anatomic pathology services established in Iowa Code section 147.106.

23.1(40) Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

23.1(41) Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

23.1(42) Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

23.1(43) Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 653—Chapter 12.

23.1(44) Voluntary agreements. The board may take disciplinary action against a physician if that physician has entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country.

a. The board will use the following criteria to determine if a physician has entered into a voluntary agreement within the meaning of Iowa Code section 148.12 and this rule.

(1) The voluntary agreement was signed during or at the conclusion of a disciplinary investigation, or to prevent a matter from proceeding to a disciplinary investigation.

(2) The agreement includes any or all of the following:

1. Education or testing that is beyond the jurisdiction's usual requirement for a license or license renewal.

2. An assignment beyond what is required for license renewal or regular practice (e.g., adoption of a protocol, use of a chaperone, completion of specified continuing education, or completion of a writing assignment).

3. A prohibition or limitation on practice privileges (e.g., a restriction on prescribing or administering controlled substances).

4. Compliance with an educational plan.

5. A requirement that surveys or reviews of patients or patient records be conducted.

6. A practice monitoring requirement.

7. A special notification requirement for a change of address.

8. Payment that is not routinely required of all physicians in that jurisdiction, such as a civil penalty, fine, or reimbursement of any expenses.

9. Any other activity or requirements imposed by the board that are beyond the usual licensure requirements for obtaining, renewing, or reinstating a license in that jurisdiction.

b. A certified copy of the voluntary agreement shall be considered prima facie evidence.

23.1(45) Performing or attempting to perform any surgical or invasive procedure on the wrong patient or at the wrong anatomical site or performing the wrong surgical procedure on a patient.

23.1(46) Violation of the standards of practice for medical directors who delegate and supervise medical aesthetic services performed by nonphysician persons at a medical spa as set out in rule 653—13.8(148,272C).

23.1(47) Failure to provide the board, within 14 days of a request by the board as set out in 653—paragraph 13.8(5)*"l,"* written verification of the education and training of all nonphysician persons who perform medical aesthetic services at a medical spa.

23.1(48) Failure to file with the board a written report and a copy of the hospital disciplinary action within 30 days of any hospital disciplinary action or the licensee's voluntary action to avoid a hospital investigation or hospital disciplinary action as required by rule 653—22.5(272C).

23.1(49) Unethical conduct of acupuncturist. The Code of Ethics (2016) prepared and approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) is utilized by the board as guiding principles in the practice of acupuncture in this state. Unethical conduct in the practice of acupuncture includes but is not limited to:

a. Failing to provide patients with the information required in Iowa Code section 148E.6 or providing false information to patients;

b. Disclosing confidential information about a patient without proper authorization; or

c. Abrogating the boundaries of acceptable conduct in the practice of acupuncture established by the profession that the board deems appropriate for ensuring that acupuncturists provide Iowans with safe and healthful care.

This rule is intended to implement Iowa Code chapters 17A, 147, 148, 148E, 148H, 272C and 272D.