Regulatory Analysis

Notice of Intended Action to be published: 653—Chapter 26
"Reinstatement After Disciplinary Action"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 148 and 272C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 17A

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:

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Purpose and Summary

This proposed rulemaking provides guidance and the process for reinstatement for licensees who have received disciplinary action from the Board of Medicine. When a licensee has prior disciplinary action from the Board, there are often additional requirements that must be met before a license will be reinstated. These additional requirements help ensure the physicians are competent and safe to practice.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs to the public to comply with this rulemaking. The licensee incurs the cost of reinstatement and licensing fees.

The cost to the Board to implement and enforce this chapter includes staff time to process the reinstatement applications, answer questions about the process, and gather the necessary documents from licensees. The Board has 6.0 full-time equivalent (FTE) positions for licensing specialists who process license applications and answer applicant and licensee questions. Staff salaries are paid from the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go into the fund to cover the costs of the Board regulations.

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

The public and licensees benefit from the proposed rulemaking. Establishing minimum reinstatement requirements ensures that practitioners are competent to practice. Without having an established threshold for reentry into the profession, individuals who are not appropriately rehabilitated could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because the chapter ensures that Iowans are treated by competent and qualified practitioners.

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:

Medicine is a large profession with approximately 17,000 licensed physicians in Iowa. In 2022, the Board received 660 complaints and issued public discipline in approximately 3 percent of the disciplinary cases. The public discipline may include suspension or revocation of the license. In these instances, the licensee must adhere to the provisions of this chapter to have the license reinstated.

- Qualitative description of impact:

Establishing minimum reinstatement requirements ensures that practitioners are competent to practice. Without having an established threshold for reentry into the profession, individuals who are not appropriately rehabilitated could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because the chapter ensures that Iowans are treated by competent and qualified practitioners.

3. Costs to the State:

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

The cost to the Board to implement and enforce this rulemaking includes staff time to process the reinstatement applications, answer questions about the process, and gather the necessary documents from licensees. The Board has 6.0 FTE positions for licensing specialists who process license applications and answer applicant and licensee questions. Staff salaries are paid from the fund. Licensing fees go into the fund to cover the costs of the Board regulations.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. Staff salaries are paid from the fund. Licensing fees go into the fund to cover the costs of the Board regulations.

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

Establishing minimum reinstatement requirements ensures that practitioners are competent to practice. Without having an established threshold for reentry into the profession, individuals who are not appropriately rehabilitated could harm the public. The Board believes the cost to license this profession is justified by the benefits achieved because the chapter ensures that Iowans are treated by competent and qualified practitioners.

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

The Board has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking. 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.

6. Alternative methods considered by the agency:

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

The Board has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking. The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. These rule edits support this effort.

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

The Board has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking. 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.

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 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
REINSTATEMENT AFTER DISCIPLINARY ACTION

653—26.1(17A) Reinstatement. Any person whose license has not been permanently suspended or revoked by the board may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

26.1(1) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board order or the date of voluntary surrender.

26.1(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application will be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement are subject to the same rules of procedure as other cases before the board.

26.1(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts is on the respondent.

26.1(4) At the board's discretion, the board and the licensee may agree to enter into a reinstatement order by agreement, in lieu of a formal reinstatement hearing before the board.

26.1(5) A reinstatement order must be based upon the affirmative vote of a quorum of the board. The reinstatement order is public information pursuant to 481—Chapter 506.

26.1(6) A physician seeking reinstatement under this rule whose license became inactive during the period of suspension or revocation is also required to complete the reactivation process set forth in 653—9.13(147,148) or 653—9.14(147,148).

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