

# VETERINARY MEDICINE BOARD[811]

## Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapters 10 and 16  
“Grounds for Discipline, Ethical Responsibilities, Contested Cases”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5  
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

### Public Hearing

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

November 13, 2023  
10 a.m.

Second Floor Conference Room  
Wallace State Office Building  
Des Moines, Iowa

### Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock  
Iowa Department of Agriculture and Land Stewardship  
Wallace State Office Building  
502 East 9th Street  
Des Moines, Iowa 50319  
Email: [colin.tadlock@iowaagriculture.gov](mailto:colin.tadlock@iowaagriculture.gov)

### Purpose and Summary

Chapter 10 provides the public and regulated community with the grounds for discipline available to the Board of Veterinary Medicine for licensees, the ethical responsibilities of licensees, and the process for conducting a contested case hearing for disciplinary matters. The Board reviewed Chapter 10 and identified several words that were unnecessary and redundant of statute. The Board also determined it could significantly reduce the length and volume of Chapter 10 through adoption by reference of the uniform standards for contested case proceedings. The adoption by reference of the uniform rules will be located in new Chapter 16.

### Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

All licensees bear some cost by complying with Board rules and ethical responsibilities, but the bulk of the costs will only be borne by those who violate the Board’s rules.

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

The public and regulated community will both benefit. Compliance with the Board’s rules and these ethical responsibilities will ensure licensees practice veterinary medicine in conformance with the standards set by the Board to protect animals and 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:

The only costs would be imposed on licensees, and those costs could vary depending upon the scope and severity of any violations. Licensees are required to meet certain minimum standards to protect animals and the public, which standards can include required equipment, training, sanitation, recordkeeping, and supervision of staff. In the event of any violations,

the Board may impose civil penalties, but the penalties are commensurate with the scope and severity of the violations, as well as the licensee's disciplinary history, if any.

- Qualitative description of impact:

The qualitative impact is the same as the quantitative impact.

3. Costs to the State:

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

The costs would be limited to time spent by the Board and staff reviewing and investigating complaints, preparing and pursuing license disciplinary actions, conducting the contested case hearing and defending any appeals. Some of those costs are covered by the fees assessed by the Board as part of its findings in a contested case proceeding.

- Anticipated effect on state revenues:

There are minimal effects on state revenues since some of the costs to the State are covered by the fees assessed by the Board for contested case proceedings, and the Board is generally funded by the license fees paid by the regulated community.

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

Failure to have grounds for discipline, ethical responsibilities, or a specific process that governs contested case proceedings would render Iowa Code chapter 169 impotent and risk violating the due process rights of the regulated community.

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

There does not appear to be any less costly method because failure to have either grounds for discipline, ethical responsibilities, or a contested case process could greatly expose the State to liabilities from legal challenges by the public and the regulated community.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

No alternative methods were considered.

### 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?

Only licensees that violate the Board's rules or ethical responsibilities are subject to Board discipline, and there does not appear to be any significant impact on small businesses having standards for the Board to impose discipline and conduct a contested case proceeding.

### Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10  
DISCIPLINE

**811—10.1(17A,169,272C) Board authority.** The board may discipline any credential holder for any grounds stated in Iowa Code chapters 169 and 272C or rules promulgated thereunder.

**811—10.2(17A,169,272C) Complaints and investigations.**

**10.2(1)** Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a credential holder.

**10.2(2)** The executive secretary or authorized designee investigates complaints in order to determine the probability that a violation of law or rule has occurred.

**811—10.3(17A,169,272C) Investigatory subpoena powers.** The board has the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

**10.3(1)** A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive secretary or a designee.

**10.3(2)** Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena has 14 days after the service of the subpoena, or before the time specified for compliance if such time is less than 14 days, to file with the board a motion to quash or modify the subpoena. The motion will describe legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**10.3(3)** Iowa Code section 272C.6(3)“a”(3) contains information regarding what happens in the event obedience to a subpoena is refused.

**811—10.4(17A,169,272C) Board action.** The board will review investigative conclusions and take one of the following actions:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

**811—10.5(17A,169,272C) Peer review committee.** The board may establish a peer review committee to assist with the investigative process when deemed necessary.

**10.5(1)** The committee will determine if the conduct of the credential holder conforms to minimum standards of acceptable and prevailing practice of veterinary medicine or other applicable standards and submit a report of its findings to the board.

**10.5(2)** The board will review the committee’s findings and proceed with action available under rule 811—10.4(17A,169,272C).

**10.5(3)** The confidentiality requirements imposed by Iowa Code section 272C.6 apply to the peer review committee.

**811—10.6(17A,169,272C) Grounds for discipline and principles of veterinary medical ethics.** The provisions of Iowa Code sections 272C.10 and 169.13 are incorporated by reference. The board has established grounds for discipline and principles of ethics for veterinary medicine. Without regard as to whether the board has determined that an injury has occurred, the board may impose any of the disciplinary sanctions set forth in rule 811—10.7(17A,169,272C), including civil penalties in an amount not to exceed \$10,000, when the board determines that the credential holder is guilty of any of the following acts or offenses:

**10.6(1)** *Grounds applicable to all credential holders.*

*a.* Fraud in procuring a credential, which includes but is not limited to an intentional perversion of the truth in making application for a credential to practice any of the professions or activities regulated by the board in this state and includes false representations of a 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 credential in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a credential in this state.

*b.* Professional incompetency of a credential holder may be established by:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the credential holder’s practice.

(2) A substantial deviation by the credential holder from the standards of learning or skill ordinarily possessed and applied by other credential holders acting in the same or similar circumstances.

(3) A willful or repeated departure from or the failure to conform to the minimal standards of acceptable and prevailing practice of credential holders.

(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public.

1. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, and includes any representation contrary to legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.

2. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a credential holder to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent credential holder acting in the same or similar circumstances, including for a veterinarian a violation of the standards of practice as set out in 811—Chapter 12, or when a credential holder is unable to practice with reasonable skill and safety on a client's animals as a result of a mental or physical impairment or chemical abuse.

c. Habitual intoxication or addiction to the use of drugs means the same as Iowa Code section 169.13(1) "h." The board may mandate a credential holder's completion of a treatment program as a condition of probation or suspension and will consider the credential holder's willingness to complete a treatment program when determining the appropriate degree of disciplinary sanction.

d. Conviction of a felony or misdemeanor, which includes, but is not limited to, the conviction of a public offense in the practice of the credential holder's profession and is defined or classified as a felony under state or federal law, or violation of a statute or law designated as a felony in this state, another state, or the United States, which statute or law directly relates to the credential holder's profession or ability to practice within the profession.

e. Fraud in representations as to skill or ability, which includes but is not limited to a credential holder's having made misleading, deceptive or untrue representations as to the credential holder's competency to perform professional services for which the credential holder is not qualified to perform by training or experience.

f. Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a credential holder in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:

(1) Inflated or unjustified expectations of favorable results;

(2) Self-laudatory claims that imply that the credential holder engaged in a field or specialty of practice for which the credential holder is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;

(3) Representations that are likely to cause the average person to misunderstand; or

(4) Extravagant claims or claims of extraordinary skills not recognized by the credential holder's profession.

g. Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.

h. Failure to report a license, certificate, permit, or other credential revocation, suspension or other disciplinary action taken by a licensing or regulating authority of another state, territory or country within 30 days of the final action by such licensing or regulating authority. A stay by an appellate court cannot negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report is expunged from the records of the board.

i. Failure of a credential holder or an applicant for a credential in this state to report, within 30 days, any settlement agreement or voluntary agreement to limit the practice of veterinary medicine or other applicable activities entered into in another state, district, territory or country or those included in Iowa Code section 272C.9 or 169.13.

j. Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

k. Failure to comply with a subpoena issued by the board.

l. Willful or gross negligence.

m. Obtaining any fee by fraud or misrepresentation.

n. Violating any of the grounds for the revocation or suspension of a credential as listed in Iowa Code section 169.13 or these rules.

*o.* A violation of Iowa Code section 169.13(1) “*d*”; having the person’s certificate, license, permit, or other credential revoked or suspended by the United States Department of Agriculture (USDA); or having the veterinarian’s USDA accreditation revoked, suspended or other disciplinary action taken against the accreditation. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence of the credential holder’s having committed one of the following actions:

- (1) Permitting or directing any auxiliary personnel or any other person who does not hold the proper credentials to perform veterinary duties involving diagnosis, prescription or surgery, except as allowed pursuant to rule 811—8.5(169);
- (2) Permitting or directing any auxiliary personnel or any other person to perform any act which would be a legal or ethical violation if committed by a veterinarian;
- (3) Failing to comply with a lawful child support order as provided in 811—Chapter 13; or
- (4) Failing to pay any hearing fees and costs within the time specified in the board’s decision.

*p.* The board cannot suspend or revoke a license issued by the board to a person who is in circumstances outlined by Iowa Code section 272C.4(10).

**10.6(2)** *Grounds applicable to licensed veterinarians only.* In addition to the grounds set out in subrule 10.6(1), without regard as to whether the board has determined that injury has occurred, a licensed veterinarian is subject to disciplinary action for the violation of any of the following:

*a.* Engaging in unethical conduct which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and which may include acts or offenses in violation of Iowa’s principles of veterinary medical ethics, as adopted in subrule 10.6(3).

*b.* Engaging in practice harmful or detrimental to the public which includes, but is not limited to, either of the following:

(1) The use of a rubber stamp to affix a signature to a prescription. A licensee who is unable, due to a physical disability, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the licensee’s presence.

(2) The practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

*c.* Iowa Code section 169.13(1) “*g.*”

*d.* Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.

*e.* Negligently failing to exercise due care in the delegation of veterinary services to or in supervision of employees or other individuals, whether or not injury results.

**10.6(3)** *Principles of veterinary medical ethics.* All Iowa-licensed veterinarians are expected to adhere to these principles of veterinary medical ethics listed below and adopted by the board.

*a. General ethics principles.*

(1) A veterinarian may only be influenced by the welfare of the patient, the needs of the client, the safety of the public, and the need to uphold the public trust vested in the veterinary profession and shall avoid conflicts of interest or the appearance thereof.

(2) A veterinarian shall provide competent veterinary medical care under the terms of a veterinarian-client-patient relationship (VCPR), with compassion and respect for animal welfare and human health.

(3) A veterinarian shall uphold the standards of professionalism, be honest in all professional interactions, and report veterinarians who are deficient in character or competence to the appropriate entities.

(4) A veterinarian shall not willfully violate the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board, or other law of this state, another state, or the United States, which relates to the practice of veterinary medicine.

(5) A veterinarian shall respect the rights of clients, colleagues, and other health professionals and safeguard medical information within the confines of the law.

(6) A veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; make relevant information available to clients, colleagues, and the public; and obtain consultation or referral when indicated.

(7) A veterinarian shall, in the provision of appropriate patient care, be free to choose whom to serve, with whom to associate, and the environment in which to provide veterinary medical care.

(8) A veterinarian shall not advertise a specialty or claim to be a specialist when not a diplomate of a veterinary specialty organization recognized by the AVMA.

*b. Veterinarian-client-patient relationship ethics.* A veterinarian shall not engage in the practice of veterinary medicine without a valid VCPR as defined in these rules.

*c. Veterinarian-client communication; documentation of informed consent.*

(1) A veterinarian shall explain to clients how any diagnostic tests offered would help diagnose a patient's medical condition.

(2) A veterinarian is responsible for professional communication directly with the client regarding diagnosis, options for treatment(s), expected cost of treatment(s), expected outcome of treatment(s), and the potential risks associated with each treatment regimen, as well as the client's ability to decline treatment(s). Client consent for the treatment(s) shall be documented in the patient's medical records. A veterinary assistant may communicate the information listed in this subparagraph to the client under the direct supervision of an Iowa-licensed veterinarian.

(3) If a veterinarian does not have the expertise or the necessary equipment and facilities to adequately diagnose or treat a patient, the veterinarian shall offer a referral to another veterinarian where the diagnosis or treatment can be performed.

*d. Veterinary medical records.*

(1) Complete, accurate and legible medical records that are considered to meet the prevailing standard of the practice of veterinary medicine are set by the board.

(2) Any controlled substances administered to a patient must be written into the patient's medical record, which shall include the drug name, the date the drug was administered, the amount of drug administered, the frequency of drug administration, and the prescribing (and administering, if different) veterinarian's name, pursuant to rules 811—12.2(169) to 811—12.4(169). This requirement is in addition to regulations and requirements promulgated by the Iowa board of pharmacy, U.S. Drug Enforcement Administration, and any other applicable governmental agency. Violating or failing to comply with a state or federal law or regulation relating to the storing, labeling, prescribing, or dispensing of controlled substances is unethical.

(3) Humane euthanasia of animals is an ethical veterinary procedure. A veterinarian can refuse to perform euthanasia.

*e. Client and patient privacy rights.*

(1) A veterinarian shall protect and respect the privacy rights of clients, colleagues, and other health professionals. A veterinarian shall not reveal confidential medical records or other medical information unless authorized to do so by law.

(2) It is unethical to place photographs or information regarding a patient, a client, or a client's premises on social media or other public platforms without the consent of the owner, unless the patient, client, or client's premises cannot be identified by its marking and unless all personally identifying information has been removed from the photograph. Use of photographs and information for didactic purposes is permitted with client consent or after removal of any information that would identify the client or patient.

*f. Professional behavior.*

(1) A veterinarian shall be honest in all professional interactions while respecting the rights of clients, colleagues, and other health professionals. A veterinarian must be honest and fair in relations with others, and a veterinarian shall not engage in fraud, misrepresentation, or deceit, including by material omission, in accordance with Iowa Code section 169.13(1) "a."

(2) A veterinarian must not defame or injure the professional standing or reputation of another veterinarian in a false or misleading manner. Any complaints about behavior of a veterinarian that may violate the principles of veterinary medical ethics should be addressed through the board in an appropriate and timely manner.

(3) A veterinarian who is impaired due to substance abuse or mental health or physical conditions as set forth in Iowa Code section 169.13(1) "h" must not act in the capacity of a veterinarian and shall seek medical treatment from qualified organizations or individuals.

**10.6(4) Recommended practices for veterinarians.**

*a.* A veterinarian is encouraged to participate in activities contributing to the improvement of the community and the betterment of public health. The responsibilities of the veterinary profession extend beyond individual patients and clients to society in general.

*b.* A veterinarian is encouraged to participate in the political process to seek changes to laws and regulations that are contrary to the best interests of the patient, the client and public health.

*c.* A veterinarian is encouraged to make the veterinarian's knowledge available to the community and to provide the veterinarian's services for activities that protect public health.

*d.* A veterinarian is encouraged to view, evaluate, and treat all individual persons in any professional activity or circumstance in which the veterinarian may be involved solely as individuals on the basis of the person's personal abilities, qualifications and character.

**811—10.7(17A,169,272C) Sanctions.** The board has authority to impose disciplinary sanctions in circumstances allowed by Iowa Code section 272C.3(2) “*a*” through “*f*.”

**811—10.8(17A,169,272C) Panel of specialists.** The board may appoint a panel of veterinarians who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee appoints the presiding officer.

**10.8(1)** The executive secretary sets the date, time, and location of the hearing and makes proper notification to all parties.

**10.8(2)** The panel of specialists shall:

- a.* Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.
- b.* Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.
- c.* Receive opening statements from the parties.
- d.* Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the credential holder.
- e.* Question the witnesses.
- f.* Receive closing statements from the parties.
- g.* Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

**811—10.9(17A,169,272C) Informal settlement.** Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The secretary or designee may negotiate with the credential holder regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

**811—10.10(17A,169,272C) Voluntary surrender.** A voluntary surrender of credentials may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

**811—10.11(17A,169,272C) Application for reinstatement.** A person whose credential has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

**10.11(1)** If the credential was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application cannot be made until one year has elapsed from the date of the order.

**10.11(2)** The application alleges facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists and that it is in the public interest to reinstate the credential. The burden of proof to establish these facts rests with the petitioner.

**10.11(3)** The hearing in an application for reinstatement is a contested case within the meaning of Iowa Code section 17A.12.

**10.11(4)** The order to grant or deny reinstatement incorporates findings of fact and conclusions of law. If reinstatement is granted, terms and conditions for reinstating the credential may be imposed.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

ITEM 2. Adopt the following **new** 811—Chapter 16:

CHAPTER 16  
CONTESTED CASES

The board of veterinary medicine adopts, with the following exceptions and amendments, Uniform Rules on Agency Procedure relating to contested cases, which are published at [www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf](http://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf) on the general assembly's website.

**811—16.1(17A) Scope and applicability.** In lieu of “(agency name)” insert “board of veterinary medicine”.

**811—16.2(17A) Definitions.** In lieu of “(agency name)” insert “board of veterinary medicine”.

“*Contested case*” means the same as defined in Iowa Code section 17A.2(5).

“*Presiding officer*” means the chairperson of the board or designee.

**811—16.3(17A) Time requirements.**

**16.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

**811—16.5(17A) Notice of hearing.** The board will issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

**16.5(1) Notice.**

a. The date, time, and location of the hearing will be set by the board. The credential holder will be notified at least 30 days prior to the scheduled hearing.

b. Notification will be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the credential holder cannot be located:

(1) An affidavit will be prepared outlining the measures taken to attempt service and will become a part of the record when a notice cannot be delivered by personal service or certified mail, return receipt requested.

(2) Notice of hearing will be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the credential holder. The newspaper will be selected by the secretary or designee. The first notice of hearing will be published at least 30 days prior to the scheduled hearing.

**811—16.6(17A) Presiding officer.** Disciplinary hearings will be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board will designate the presiding officer in accordance with the provisions of Iowa Code section 17A.11.

**16.6(1)** For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing.

**16.6(2)** In lieu of “agency (or its designee)” insert “executive secretary”.

c. The board does not adopt X.6(2) “c.”

i. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

**16.6(3)** The executive secretary will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

**16.6(4)** The board does not adopt X.6(4).

**16.6(6)** In lieu of “agency heads and members of multimembered agency heads” insert “the board”.

**811—16.9(17A) Disqualification.**

**16.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 16.9(1), the party must file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person must withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer must enter an order to that effect.

**811—16.12(17A) Service and filing of pleadings and other papers.**

**16.12(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding must be filed with the board.

**811—16.15(17A) Motions.**

**16.15(5)** The board does not adopt X.15(5).

**811—16.17(17A) Continuances.** The executive secretary has the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions may be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.

**811—16.19(17A) Intervention.** The board does not adopt X.19.

**811—16.22(17A) Default.**

**16.22(8)** The board does not adopt X.22(8).

**16.22(10)** The board does not adopt X.22(10).

**811—16.23(17A) Ex parte communication.**

**16.23(6)** In lieu of “executive director” insert “executive secretary”.

**16.23(9)** Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer must disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**16.23(10)** In lieu of “(agency to designate person to whom violations should be reported)” insert “the board’s executive secretary”.

**811—16.24(17A) Recording costs.** In lieu of “(agency name)” insert “board”.

**811—16.25(17A) Interlocutory appeals.** The board does not adopt X.25.

**811—16.26(17A) Final decision.** When the board presides over reception of the evidence at the hearing, its decision is a final decision.

**16.26(1)** When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact will be considered by the board at the earliest feasible time. The decision of the board is a final decision.

**16.26(2)** A final decision in a contested case proceeding must be in writing and include findings of fact and conclusions of law, separately stated.

*a.* Findings of fact must be accompanied by a concise and explicit statement of underlying facts supporting the findings.

*b.* The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact.

*c.* Conclusions of law must be supported by cited authority or by a reasoned opinion.

**16.26(3)** The decision or order must be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

**16.26(4)** The final decision is a public record pursuant to Iowa Code section 272C.6(4).

**811—16.27(17A) Appeals.**

**16.27(1) Appeal by party.** Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19.

**16.27(2) Review.** The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

**16.27(3) Notice of appeal.** In lieu of “a proposed decision” insert “decision or order”, and in lieu of “(agency name)” insert “board”.

**16.27(4) Requests to present additional evidence.** In lieu of “14 days (or other time period designated by the agency)” insert “15 days”. In lieu of “(board, commission, director)” insert “board”.

**16.27(5) Scheduling.** In lieu of “(agency name)” insert “board”.

**16.27(6) Briefs and arguments.** In lieu of “(board, commission, director)” insert “board”.

**811—16.28(17A) Applications for rehearing.**

**16.28(3) Time of filing.** In lieu of “(agency name)” insert “board”.

**16.28(4) Notice to other parties.** In lieu of “(agency name)” insert “board”.

**811—16.29(17A) Stays of agency actions.** The board does not adopt X.29.

**811—16.30(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

**811—16.31(272C) Disciplinary hearing—fees and costs.**

**16.31(1) Definitions.** As used in this rule in relation to a formal disciplinary action filed by the board against a credential holder:

“*Deposition*” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Medical examination fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a credential holder when the examination or evaluation is conducted pursuant to an order of the board.

“*Record*” means the proceedings of the hearing including, but not limited to, the transcript and any documentary evidence admitted or offered at the hearing.

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

**16.31(2) Disciplinary hearing fee.** The board may charge a fee not to exceed the amount authorized in Iowa Code section 272C.6 for conducting a disciplinary hearing which results in disciplinary action taken against the credential holder by the board. An order assessing a fee must be included as part of the board’s final decision. The order must direct the credential holder to deliver payment directly to the department of agriculture and land stewardship as provided in subrule 16.31(6).

**16.31(3) Recovery of related hearing costs.** The board may also recover from the credential holder the costs for transcripts, witness fees and expenses, depositions, and medical examination fees, if disciplinary action is taken. The board may assess these costs in the manner it deems most equitable in accordance with the following:

*a. Transcript costs.* The board may assess the transcript costs against the credential holder pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party must timely request and pay for the transcript necessary for use in the board appeal process.

*b. Witness fees and expenses.* The parties in a contested case are responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a credential holder the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

(1) The costs for lay witnesses will be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses will be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines currently in effect.

*c. Deposition costs.* Deposition costs for purposes of allocating costs against a credential holder include only those deposition costs incurred by the state of Iowa. The credential holder is directly responsible for the payment of deposition costs incurred by the credential holder.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition costs include a reasonable fee for an expert witness. This fee must not exceed the expert's customary hourly or daily fee, and must include the time reasonably and necessarily spent in connection with the deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for the deposition.

*d. Medical examination fees.* All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case must be paid directly by the credential holder.

**16.31(4) Certification of reimbursable costs.** Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the secretary must certify any reimbursable costs to the board. The secretary must calculate the specific costs, certify the costs calculated, and file the certification as part of the record in the contested case. A copy of the certification must be served on each party of record at the time of the filing.

**16.31(5) Assessment of fees and costs.** A final decision of the board imposing disciplinary action against a credential holder must include the amount of any fee assessed. If the board also assesses costs against the credential holder, the final decision must include a statement of costs delineating each category of costs and the amount assessed. The board must specify the time period in which the fees and costs must be paid by the credential holder.

*a.* A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

*b.* The application must be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

**16.31(6) Payment of fees and costs.** Payment for fees and costs assessed pursuant to this rule must be made in the form of a check or money order made payable to the state of Iowa and delivered by the credential holder to the department of agriculture and land stewardship.

**16.31(7) Failure to make payment.** Failure of a credential holder to pay any fees and costs within the time specified in the board's decision constitutes a violation of an order of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.