

VETERINARY MEDICINE BOARD [811]

Rules renumbered and transferred from agency number[842] to [811] to conform with the reorganization numbering scheme in general.

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CHAPTER 1
DESCRIPTION OF ORGANIZATION AND DEFINITIONS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 1]

811—1.1(17A,169) Organization and duties. The board of veterinary medicine shall consist of five members, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians and who shall represent the general public. One public member may be a graduate of an AVMA-accredited school of veterinary technology and be credentialed in Iowa as a veterinary technician. The state veterinarian shall serve as secretary. The board may administer examinations to applicants for a license or temporary permit to practice veterinary medicine and to applicants for licenses or certificates for auxiliary personnel. The board shall investigate and discipline, as necessary, persons for whom credentials have been issued or who are engaged in an activity regulated by the board.

811—1.2(17A,169) Headquarters of the board. The official mailing address of the board is: Iowa Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053.

811—1.3(17A,169) Meetings. The board shall meet once a year at its headquarters and shall hold additional meetings as necessary for the purpose of administering examinations and conducting its duties. The organizational meeting shall be the first board meeting of the fiscal year. The fiscal year begins July 1. Three members shall constitute a quorum authorized to act in the name of the board.

811—1.4(17A,169) Definitions. As used in these rules, unless the context otherwise requires:

“*AAVSB*” means the American Association of Veterinary State Boards.

“*AVMA*” means the American Veterinary Medical Association.

“*AVMA-accredited*” means colleges in the United States and foreign colleges evaluated by the AVMA Council on Education and found to meet accreditation standards as published.

“*AVMA-listed*” means a foreign college recognized by the World Health Organization or the government of its own country whose graduates are eligible to practice veterinary medicine in that country and whose graduates may qualify for entrance in the ECFVG certification program.

“*Board*” means the Iowa board of veterinary medicine.

“*Certificate*” means a credential issued by the board to practice on an animal as a certified veterinary student pursuant to 811—subrule 6.6(3).

“*Certificate holder*” means a person issued a certificate by the board.

“*Client*” means the patient’s owner, owner’s designee, or other person responsible for the patient.

“*Client consent*” requires that the licensed veterinarian inform the client of the reasonable and usual diagnostic and treatment options available and provide an assessment of the risks and benefits of such choices, the prognosis and an estimate of the fees expected for the provision of services. The consent of the client shall be provided in verbal or written form prior to initiation of diagnostic and treatment procedures and shall be documented in the medical record by the licensed veterinarian or staff. The client shall indicate that the client’s questions have been answered to the client’s satisfaction and that the client consents to the recommended treatments or procedures.

“*Credential*” means, as applicable, a certificate, license, or permit issued by the board.

“*Credential holder*” means a person who holds a certificate, license, or permit issued by the board.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Direct supervision*” means that a licensed veterinarian is on the premises and is readily available.

“*ECFVG*” means the Educational Commission for Foreign Veterinary Graduates.

“*License*” means a credential issued by the board that permits a person to practice veterinary medicine.

“*Licensee*” means a person holding a license issued by the board.

“*NAVLE*” means the North American Veterinary Licensing Examination.

“*NBVME*” means the National Board of Veterinary Medical Examiners.

“*Patient*” means an animal or group of animals examined or treated by a licensed veterinarian.

“*PAVE*” means the Program for the Assessment of Veterinary Education Equivalence.

“*Permit*” means a temporary educational permit or a temporary in-state practice permit issued by the board pursuant to rule 811—9.1(169).

“*Permit holder*” means a person holding a permit issued by the board.

“*Qualifying military service personnel*” means a person, or the spouse of that person, who is currently or who has been during the past 12 months on federal active duty, state active duty, or national guard duty and has provided sufficient documentation to the board concerning the service and, if applicable, marriage.

“*RACE*” means the Registry of Approved Continuing Education, which is the national clearinghouse for approval of continuing education providers and their programs. All RACE-approved continuing education providers and programs are listed on the American Association of Veterinary State Boards Web site.

“*Veterinarian*” means a person who has received a doctor of veterinary medicine degree or its equivalent from an AVMA-accredited, -approved or -listed college of veterinary medicine.

“*VTNE*” means the Veterinary Technician National Examination.

[ARC 1465C, IAB 5/28/14, effective 7/2/14; ARC 1984C, IAB 4/29/15, effective 6/3/15]

These rules are intended to implement Iowa Code section 17A.3 and chapter 169.

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CHAPTER 2
PETITIONS FOR RULE MAKING
[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

Insert the petition for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the addition of a new rule 811—2.5(17A) and the following amendments:

811—2.1(17A) Petition for rule making. In lieu of the words “agency, at (designate office)”, insert “Board of Veterinary Medicine at the Iowa Department of Agriculture and Land Stewardship, State Veterinarian, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”. In lieu of the words “(AGENCY NAME)”, the heading on the petition should read:

BEFORE THE
BOARD OF VETERINARY MEDICINE

811—2.3(17A) Inquiries. Substitute the following information for the parenthetical statement at the end: “the State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

811—2.5(17A) Petitions received by department. If, pursuant to rule 21—3.5(17A), the secretary of agriculture receives and forwards a petition for rule making which is not within the rule-making power of the secretary but which is within the rule-making power of the board, the petition will be accepted for action by the board.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 3
DECLARATORY ORDERS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.5]

The veterinary medicine board hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

811—3.1(17A,169,272C) Petition for declaratory order. In lieu of the words “(designate agency)” the first time the words are used, insert “board of veterinary medicine (hereinafter referred to as “the board”)”. In lieu of the words “(designate agency)” the subsequent times the words are used, insert “board”. In lieu of the words “(designate office)”, insert “State Veterinarian’s Office, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”. In lieu of the words “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

811—3.2(17A,169,272C) Notice of petition. In lieu of the words and numbers “_____ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “board”.

811—3.3(17A,169,272C) Intervention.

3.3(1) In lieu of the words “_____ days”, insert “20 days”.

3.3(2) In lieu of the words “(designate agency)”, insert “the board”.

3.3(3) In lieu of the words “(designate office)”, insert “the state veterinarian’s office at the department of agriculture and land stewardship in the Wallace State Office Building”. In lieu of the words “(designate agency)”, insert “board”. In lieu of the words “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

Delete paragraph 6 and insert in lieu thereof the following:

“6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.”

811—3.4(17A,169,272C) Briefs. In lieu of the words “(designate agency)”, insert “board”.

811—3.5(17A,169,272C) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

811—3.6(17A,169,272C) Service and filing of petitions and other papers.

3.6(2) In lieu of the words “(specify office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”. In lieu of the words “(agency name)”, insert “board”.

3.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 10.23(17A,169,272C)”.

811—3.7(17A,169,272C) Consideration. In lieu of the words “(designate agency)”, insert “board”.

811—3.8(17A,169,272C) Action on petition.

3.8(1) In lieu of the words “(designate agency head)”, insert “the chairperson of the board”.

3.8(2) In lieu of the words “(contested case uniform rule X.2(17A))”, insert “rule 10.14(17A,169,272C)”.

811—3.9(17A,169,272C) Refusal to issue order.

3.9(1) In lieu of the words “(designate agency)”, insert “board”.

811—3.12(17A,169,272C) Effect of a declaratory order. In lieu of the words “(designate agency)”, insert “board”. Delete the words “(who consent to be bound)”.

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

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

The veterinary medicine board hereby adopts the agency procedure for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

811—4.1(17A,169,272C) Applicability. In lieu of the word “agency”, insert “the board of veterinary medicine (hereinafter referred to as “the board”)”.

811—4.3(17A,169,272C) Public rule-making docket.

4.3(2) In lieu of the words “(commission, board, council, director)”, insert “board”.

811—4.4(17A,169,272C) Notice of proposed rule making.

4.4(3) In lieu of the words “(specify time period)”, insert “one year”.

811—4.5(17A,169,272C) Public participation.

4.5(1) In lieu of the words “(identify office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

4.5(5) In lieu of the words “(designate office and telephone number)”, insert “the state veterinarian office at (515)281-8617”.

811—4.6(17A,169,272C) Regulatory analysis.

4.6(2) In lieu of the words “(designate office)”, insert “state veterinarian’s office”.

811—4.10(17A,169,272C) Exemptions from public rule-making procedures.

4.10(2) is not adopted.

811—4.11(17A,169,272C) Concise statement of reasons.

4.11(1) In lieu of the words “(specify the office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

811—4.13(17A,169,272C) Agency rule-making record.

4.13(2) In lieu of the words “(agency head)”, insert “chairperson of the board”.

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

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CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Insert the fair information practices segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the addition of new rules 811—5.9(17A,22) to 811—5.16(17A,22) and the following amendments:

811—5.1(17A,22) Definitions. In lieu of the words “(official or body issuing these rules)” insert “board of veterinary medicine”.

811—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “state veterinarian as secretary of the board of veterinary medicine”. In lieu of the words “(insert agency name and address)”, insert “Board of Veterinary Medicine, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

5.3(2) Office hours. In lieu of the parenthetical statement, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

5.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

c. Supervisory fee. In lieu of the words “(specify time period)” insert “one-half hour”.

811—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)” insert “the board of veterinary medicine”.

811—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 811—5.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

811—5.10(17A,22) Routine use.

5.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
- d.* Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

811—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 811—5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

811—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 811—5.6(17A,22). However, the agency need not release the following records to the subject:

- a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))
- d.* As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

811—5.13(17A,22) Availability of records.

5.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- b.* Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)
- c.* Records which are exempt from disclosure under Iowa Code section 22.7.
- d.* Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records made confidential by law.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 811—5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

811—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 811—5.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 169. The record systems maintained by the agency are:

5.14(1) Personnel files. “Employees” of the agency are employed through the department of agriculture and land stewardship. Through the department of agriculture and land stewardship, the agency maintains files containing information about “employees,” families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. This material includes personally identifiable information such as name, address, social security number and employee payroll number. Some of this information is confidential under Iowa Code section 22.7(11). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(2) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys’ notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(3) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.3(1) “d,” 17A.3(2), and 17A.12, and the Iowa Code sections noted in subrule 5.14(4). Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter, and may, unless released by the credential holder, be confidential as stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(4) Credential records. Under Iowa Code chapter 169, the board regulates by license veterinarians, and regulates by certificate veterinary technicians, assistants and veterinary students, and regulates by temporary permit veterinarians credentialed under Iowa Code section 169.11 and rule 811—9.1(169), Iowa Administrative Code. Credential records include, but are not limited to, information identifying the credential holder by name or code, location, and form of business entity, including the names of corporate principals. These records may include examinations, complaints, compliance activities and investigatory reports that are confidential. These records may include confidential information protected from disclosure under Iowa Code sections 22.7, 169.6 and 272.6. These records are maintained jointly with the department of agriculture and land stewardship. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(5) Laboratory reports. In furtherance of licensure and certification regulation under subrule 5.14(4), the board may procure laboratory reports consisting of analytical results of samples. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18), as well as those provisions stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records are identified by the name or code of the subject of the investigation.

811—5.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 811—5.1(17A,22). These records are routinely available to the public. However, the agency’s files of these records may contain confidential information as discussed in rule 811—5.13(17A,22). The records listed may contain information about individuals.

1. Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2. Publications. The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

3. Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

4. Board records. Agendas, minutes, and materials prepared or maintained by the board are available from the office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

5. All other records that are not exempted from disclosure by law.

811—5.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

811—5.17(169,252J,272D) Release of confidential licensing information for collection purposes. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit or with the centralized collection unit of the department of revenue through manual or automated means for the sole purpose of identifying applicants or credential holders subject to enforcement under Iowa Code chapter 252J, 598 or 272D.

[ARC 9512B, IAB 5/18/11, effective 6/22/11]

811—5.18(17A,22,169,261) Release of information to the college student aid commission. Notwithstanding any statutory confidentiality provisions, the board may share information with the college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapters 17A, 22, 169 and 252J.

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CHAPTER 6
APPLICATION FOR VETERINARY LICENSURE

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 2]

Chapter 6, Suspension or Revocation of License, rescinded IAC 2/8/89; see 811—Ch 10.

811—6.1(169) Procedure.

6.1(1) *Application to take examination.* Any person desiring to take the NAVLE in Iowa for a license to practice veterinary medicine shall make application to the board in accordance with the guidelines and time lines established by the NBVME. The applicant shall submit to the board proof of completing the application process with NBVME along with the administrative fee by sending the proof and fee to:

Iowa Board of Veterinary Medicine
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319-0053

Proof of NAVLE application shall be submitted to the board in accordance with the guidelines and time lines established by the NBVME on forms to be provided by the board. The form shall be notarized and completely filled out. The completed form shall include one current passport size and quality photograph of the applicant. Incomplete applications shall be returned to the applicant along with the tendered fee and a written statement setting forth the reasons for such rejections.

The form shall be accompanied by satisfactory evidence of the applicant's having graduated from an AVMA-accredited school of veterinary medicine or satisfactory evidence that the applicant is expected to graduate within six months of the date of the examination.

Applications to take the NAVLE will not be accepted from any person who has previously taken and passed that examination in any jurisdiction, except on case-by-case petition to the board for good cause shown or other order of the board.

6.1(2) *License requirements.* Prior to the board's issuance of a license, the applicant shall:

- a. Successfully complete the NAVLE as provided in rule 811—7.1(169);
- b. Remit the proper application fee for licensure;
- c. Graduate from:
 - (1) An AVMA-accredited school of veterinary medicine; or
 - (2) An AVMA-listed school of veterinary medicine and have received a certificate from either ECFVG or PAVE;
- d. Provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine. The applicant shall provide information and shall consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed;
- e. Provide information or consent to the release of information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications; and
- f. Submit evidence of having completed at least 60 hours of approved continuing education within the last three licensing years. New graduates and applicants within one year after the date of graduation are exempt from continuing education requirements for initial licensing. Applicants who apply more than one year but less than two years after the date of graduation must complete at least 20 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation must have completed at least 40 hours of approved continuing education. As used in this paragraph, "date of graduation" also includes the date of PAVE or ECFVG certification.

A license issued during a triennium, upon the applicant's completion of these requirements and payment of the prorated triennial license fee, shall be issued for the balance of the triennium. A license shall expire on June 30 of the third year if the triennium.

811—6.2(169) Fee schedule for veterinarians. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the

applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of an examination application provided withdrawal is received in writing 45 days prior to the examination date. However, the state fees may be waived for qualifying military service personnel upon request. Examination fees shall be nontransferable from one examination to another.

The fee for the NAVLE, which is utilized by the board as a part of the licensure process, shall be the fee charged that year by NBVME, plus an administrative fee payable to the board.

Based on the board's anticipated financial requirements, the following fees are hereby adopted:

License—application fee	\$50
NAVLE examination fee	set by NBVME
Board administrative fee for NAVLE	\$25
State veterinary examination fee	set by board
State veterinary administration fee	set by board
Triennial license	\$60
Late renewal penalty	\$100
License by endorsement—application fee	\$50
Reactivation fee for lapsed or inactive license	\$100
Reinstatement fee	\$100
Duplicate license	\$15
Temporary permit	\$35
Temporary permit application fee	\$15
Official licensure verification	\$15
Charge for insufficient funds or returned checks	\$25
Senior student certificate	\$0

This rule is intended to implement Iowa Code sections 169.5 and 169.12.

[ARC 1984C, IAB 4/29/15, effective 6/3/15]

811—6.3(169) Reactivation fee. All applications for reactivation of a lapsed or inactive license to practice veterinary medicine shall be filed with the secretary of the board, together with the then current license fee, the current reactivation fee, and all applicable penalties for a lapsed or inactive license.

811—6.4(169) Graduates of foreign schools. Graduates of foreign veterinary schools may become eligible for examination and licensure by either of the following methods:

6.4(1) Examination eligibility through ECFVG. Graduates of foreign veterinary schools which, pursuant to the AVMA criteria, are not AVMA-accredited but are AVMA-listed may make application to take the NAVLE in this state provided that the application includes a copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from an AVMA-listed college and a letter from the ECFVG verifying that the applicant is or will be participating in an ECFVG certification program.

6.4(2) Licensure eligibility through ECFVG. Graduates of foreign veterinary schools which are not AVMA-accredited but are AVMA-listed will not be considered for licensing until they have received the certificate granted by the ECFVG. A license will not be issued to an applicant until the applicant submits a certified copy of the applicant's ECFVG certificate.

6.4(3) Examination eligibility through PAVE. Graduates of foreign veterinary schools may make application to take the NAVLE in this state provided that the application includes a certified copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from a foreign veterinary school and a letter from the AAVSB on behalf of PAVE verifying that the applicant is participating in the PAVE certification program administered by the AAVSB, and has met the requirements for taking the NAVLE.

6.4(4) *Licensure eligibility through PAVE.* Graduates of foreign veterinary schools will not be considered for licensing until they have received the certificate granted by PAVE. A license will not be issued to an applicant until the applicant submits a copy of the applicant's PAVE certificate.

811—6.5(169) License by endorsement.

6.5(1) A license by endorsement may be granted by the board pursuant to either Iowa Code section 169.10(1) or 169.10(2). An applicant shall make application for a license by endorsement on a form provided by the board. The application fee and triennial license fee shall accompany the application. In addition to the information specified in Iowa Code section 169.10, the applicant shall supply all of the following:

a. A statement indicating all jurisdictions in which the licensee is or has ever been licensed to practice veterinary medicine. The applicant shall provide information and shall consent to the release of information to the board from jurisdictions in which the applicant is or has ever been licensed.

b. Information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications.

c. Evidence of approved continuing education totaling at least 60 hours obtained within the last three licensing years. New graduates and applicants within one year after graduation are exempt from continuing education requirements for initial licensing. Applicants who apply more than one year but less than two years after the date of graduation must complete at least 20 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation must have completed at least 40 hours of approved continuing education. As used in this paragraph, "date of graduation" also includes the date of PAVE or ECFVG certification. Foreign graduates licensed by PAVE or ECFVG certification are exempt from the continuing education requirement for one year from the date of certification by PAVE or ECFVG.

6.5(2) For an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1), the following shall apply:

a. If the applicant's non-Iowa license was issued between December 31, 1964, and December 31, 1979, the applicant shall have successfully completed the National Board Examination (NBE).

b. If the applicant's non-Iowa license was issued between January 1, 1980, and December 31, 2000, the applicant shall have successfully completed the National Board Examination (NBE) and the Clinical Competency Test (CCT).

c. If the applicant's non-Iowa license was issued on or after January 1, 2001, the applicant shall have successfully completed the NAVLE in accordance with rule 811—7.1(169).

6.5(3) An applicant who is a diplomate under Iowa Code section 169.10(2) shall also include a copy of the applicant's board or college specialty certificate. For the purpose of this rule, a specialty board or college means a specialty board or college which has been officially recognized by the AVMA. Changes of specialty status shall be reported to the board within 30 days of the action.

811—6.6(169) Issuance of limited license; specialization.

6.6(1) The board may grant a license to practice veterinary medicine within a limited and specified scope:

a. As an option for board discipline under 811—Chapter 10.

b. To a qualified member of the faculty of the Iowa State University College of Veterinary Medicine.

c. To an applicant requesting limited or specialized status.

6.6(2) A licensed veterinarian shall not claim or imply specialization unless the veterinarian is a diplomate in good standing of the respective specialty board or college recognized by the AVMA.

6.6(3) Veterinary student certificate. The board may issue a veterinary student certificate to a senior veterinary student who is attending an AVMA-accredited college of veterinary medicine, upon endorsement by the college that the student is competent to perform veterinary duties. The certificate issued by the board shall limit the student to performing duties under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian. Veterinary student

certificate holders are prohibited from administering rabies vaccine to dogs as described in Iowa Code section 351.35 and signing a certificate of veterinary inspection as described in Iowa Code section 163.12.

6.6(4) Limited licensure for faculty. Faculty, not including residents or interns, at Iowa State University College of Veterinary Medicine may be issued a limited license to practice veterinary medicine. The applicant for a limited license for faculty shall have graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or have received a PAVE or ECFVG certificate and shall submit a completed application and the required fees. Holders of limited licenses for faculty are limited to duties performed on the college premises during periods of employment at the college.

811—6.7(169) License renewal.

6.7(1) A license to practice veterinary medicine shall be issued for a three-year period, except that new licenses issued during a triennium shall be issued for the balance of that triennium, except that new certificates issued during a triennium shall be issued for the balance of the triennium and the certificate fee shall be prorated. A license shall expire on June 30 of the third year of the triennium.

6.7(2) At least two months before the end of a triennium, a renewal notice will be sent to each licensee at the last address in the board's file. Failure to receive the notice shall not relieve the licensee of the obligation to pay triennium renewal fees on or before June 30.

6.7(3) The license renewal application shall include a statement which certifies the jurisdictions in which the licensee is currently or has in the past been licensed to practice veterinary medicine.

6.7(4) Renewal fees shall be received by the board on or before the end of the triennium on June 30. Whenever renewal fees are not received as specified, the license lapses and the practice of veterinary medicine must cease until all renewal fees and penalty fees are received by the board.

6.7(5) If the renewal fee has not been received by the board before the license has lapsed, an application for renewal must be filed with the board with a renewal fee in addition to the reactivation fee and the late renewal penalty fee.

811—6.8(169,261) Issuance or renewal of a license to practice veterinary medicine—denial. The board shall deny the issuance or renewal of a license to practice veterinary medicine upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in 1998 Iowa Acts, chapter 1081. In addition to the procedures contained therein, the following shall apply.

6.8(1) The notice required by 1998 Iowa Acts, chapter 1081, section 6, shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant may accept service personally or through authorized counsel.

6.8(2) The effective date of the denial of the issuance of the license or renewal of a license, as specified in the notice required by 1998 Iowa Acts, chapter 1081, section 6, shall be 60 days following service of the notice upon the applicant.

6.8(3) The board's executive secretary is authorized to prepare and serve the notice required by 1998 Iowa Acts, chapter 1081, section 6, upon the applicant.

6.8(4) Applicants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to 1998 Iowa Acts, chapter 1081, section 7, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

6.8(5) All board fees required for application or renewal must be paid by applicants and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

6.8(6) In the event an applicant timely files a district court action following service of a board notice pursuant to 1998 Iowa Acts, chapter 1081, sections 6 and 7, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial

of the issuance or renewal of a license, the board shall count the number of days before the court action was disposed of by the court.

6.8(7) The board shall notify the applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the applicant when the license is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

811—6.9(169) Renewal, lapsed or inactive license. A veterinarian whose license has lapsed may renew an expired license within five years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After five years have elapsed since the date of expiration, a license may not be renewed, and the veterinarian must make application for a new license and take the license examination. A veterinarian whose license has lapsed or has been placed on inactive status shall, prior to receiving active status licensure in the practice of veterinary medicine in the state of Iowa, satisfy the requirements in either subrule 6.9(1) or subrule 6.9(2) for renewal of a lapsed or inactive license:

6.9(1) *Renewal of a lapsed or inactive license.* An applicant for renewal of a lapsed or inactive license shall do both of the following:

a. Submit written application for renewal of a lapsed or inactive license to the board upon forms provided by the board;

b. Furnish evidence of compliance with continuing education requirements specified in rule 811—11.3(169).

6.9(2) *Renewal by endorsement.* An applicant for renewal by endorsement may submit an application for renewal by endorsement by following the procedures set out in rule 811—6.5(169).

These rules are intended to implement Iowa Code chapters 17A, 169, and 261.

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CHAPTER 7
VETERINARY EXAMINATIONS
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 3]

811—7.1(169) Examination procedure. In order to successfully complete the NAVLE, an applicant shall achieve the minimum passing score as determined by the NBVME. The NAVLE is prepared by the NBVME for use by the board.

7.1(1) Examinations shall be given in April and December each year. The dates for the examination shall be those set by the NBVME. Examinations shall be held at a site to be determined by the NBVME.

7.1(2) Upon request, the NBVME will attempt to provide adequate individualized testing arrangements for applicants who establish the existence of a verified disability including a verified learning disability, consistent with the provisions of the Americans with Disabilities Act of 1990 and regulations promulgated thereunder. Verification may be provided by a testing or evaluation agency approved by the NBVME or by a physician approved by the NBVME.

811—7.2(169) Conduct. The following rules shall govern the conduct of examinations and shall be strictly adhered to throughout the entire examination. An examinee who violates any of the rules, or instructions applicable to them may be declared by the board to have failed the examination.

7.2(1) Unless otherwise notified in writing, applicants must appear at the appointed hour on the first day of examination at the designated site as fixed by the board, at which time the board shall assign each applicant a number for identification purposes during such examination.

7.2(2) The ability of an examinee to read and interpret instructions shall be evaluated and considered by the board as part of the examination.

7.2(3) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination.

7.2(4) If the examinee fails the examination and desires to take a subsequent examination, the examinee shall notify the board at least 60 days prior to the first day of the next examination, shall certify that the material statements contained in the original applications are currently true and correct, shall supplement that information as necessary, and shall pay the requisite fee.

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

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CHAPTER 8
AUXILIARY PERSONNEL
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 4]

811—8.1(169,17A) Definitions. As used in these rules, the following terms shall mean:

“Accredited school of veterinary technology” means a two-year college level training program providing basic training leading to a certificate of completion of a two-year program recognized and approved by the AVMA committee on accreditation of training for veterinary technicians or recognized and approved by the board.

“Board” means board of veterinary medicine.

“Department” shall mean the Iowa department of agriculture and land stewardship.

“Veterinary assistant” means an assistant employed by a licensed veterinarian for a purpose other than performing diagnosis, issuing prescriptions or performing surgery and includes, among other assistants, registered veterinary technicians.

“Veterinary technician” means any citizen of the United States who shall have graduated in veterinary technology from a two-year AVMA accredited school of veterinary technology; or in lieu thereof has assisted a licensed veterinarian for five years prior to 1980, or worked under the direction of a licensed veterinarian for at least three years, including at least one year of formal training approved by the board, in veterinary technology prior to 1981; and who shall have successfully passed an examination prescribed by the board.

811—8.2(169) Registration of veterinary technicians. All veterinary technicians shall be under the direct control of the board and shall be registered with the state veterinarian, bureau of animal industry, Iowa department of agriculture and land stewardship. Each veterinary technician must pass both a written and practical test as approved by the board. Applications for registration shall be obtained from and remitted to the board. Successful candidates shall be issued a certificate by the board stating that the named candidate is registered as a veterinary technician.

811—8.3(169) Examination. An application fee of \$25 shall accompany the application to take the examination; and both must be received by the board at least 60 days before the examination. An additional fee shall be submitted for the national board written examination as provided by the professional examination service, when utilized by the board as part of their examination process, which shall be the fees charged for the examination by the professional examination service plus \$10 for the costs of administration. Examinations shall be given annually in June at a site to be designated by the board at least 30 days before the date of the examination. The fee may be waived for qualifying military service personnel upon request.

This rule is intended to implement Iowa Code sections 169.5(8), 169.9, 169.12 and 272C.4.
[ARC 1984C, IAB 4/29/15, effective 6/3/15]

811—8.4 Reserved.

811—8.5(169) Supervision. All veterinary assistants, including veterinary technicians, shall be employed by and receive compensation from and be under the direct supervision of a licensed or license exempt veterinarian, and shall function at the same place of business as the veterinarian. Such supervision shall include, but not be limited to, the availability of the veterinarian on the premises.

8.5(1) Veterinarian's responsibility:

a. To personally examine the animal within 12 hours before the assistant carries out any procedures.

b. To direct, control and supervise the conduct of the assistant in the assistant's work.

8.5(2) Veterinary assistant's responsibility:

a. The veterinary assistant, including registered veterinarian technicians, shall not perform surgery; shall not make a diagnosis and prognosis of animal diseases; shall not prescribe drugs, medicine and appliances, and shall not administer rabies vaccine.

b. Under conditions of an emergency, a veterinary assistant including a registered veterinary technician may render without supervision such lifesaving aid and treatment as follows: administration of oxygen; maintenance of airways including the nonsurgical insertion of an endotracheal tube; and control of hemorrhage. Under conditions of emergency, a registered veterinary technician but not an unregistered veterinary assistant may render such additional lifesaving aid and treatment as follows: placement of an IV catheter and the administration of fluids; external cardiac massage; and the administration of corticosteroids. Emergency aid and treatment, if rendered to an animal not in the presence of a licensed veterinarian, shall only be continued under the direction of a licensed veterinarian, which in the case of emergency may include telephone or radio contact by a veterinarian en route to the site, until the veterinarian arrives in a timely manner. "Emergency" for the purpose of this rule means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

811—8.6(169) Revocation or suspension of veterinary technician's certificate. The following shall be grounds for revocation or suspension of a certificate at the discretion of the board:

1. Fraud, misrepresentation or deception in obtaining a certificate.
2. Conviction of a felony, in which case the record of such conviction will be conclusive evidence.
3. Chronic inebriety or habitual use of drugs.
4. For having professional connection with, or lending one's name to any illegal practice of veterinary medicine and the various branches thereof.
5. Conduct reflecting unfavorably on the vocation of veterinary technology.
6. Conviction on the charge of cruelty to animals.
7. Failure to satisfy the continuing education requirements of rule 8.10(169,272C).

811—8.7(169) Action against veterinarians. The board of veterinary medicine shall take action against any veterinarian licensed to practice in the state of Iowa who:

1. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform veterinary duties involving diagnosis, prescription or surgery.
2. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform any act which would be a legal or ethical violation if committed by the veterinarian.

811—8.8(169,272C) Disciplinary procedure. Disciplinary action taken under rule 8.6(169) or 8.7(169) shall follow the procedure established by 811—10.50(169,272C). Where appropriate, references in 811—10.50(169,272C) to a person licensed to practice veterinary medicine shall be construed to mean persons certified as a veterinary assistant or technician.

811—8.9(169,272C) Certification by endorsement. On a case-by-case basis, the board may issue certification by endorsement and without examination to applicants who hold certification or licensure as veterinary technicians in another jurisdiction.

811—8.10(169,272C) Continuing education.

8.10(1) At least 30 hours of continuing education in courses approved by the board of veterinary medicine shall be completed triennially by each registered veterinary technician. The registrant has the responsibility for financing continuing education. These credit hours may be obtained by attending approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any board-approved national, state or regional meeting will be acceptable. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 15 hours during any one triennial. A maximum of 10 hours during any one triennial may be achieved by the completion of approved home study courses.

8.10(2) Each registrant shall obtain the 30 credit hours between the registrant's certificate anniversary date and the last day of the following three-year period. However, a registrant who graduated from an accredited college of veterinary technology within three years of the issuance of an Iowa certificate is required to obtain only 20 credit hours for the first triennial. Continuing education

credits in excess of 30 hours for any three-year period may be carried over to the next triennial period, but the total number of credits carried over shall not exceed 10 hours.

8.10(3) Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board by December 31 of the triennial anniversary year. The reporting form must be signed by the registrant and accompanied by an administration fee of \$15.

8.10(4) Compliance with this rule and subrule 8.6(7) is waived until January 1, 1993. Registrants whose certificate triennial anniversary dates fall in the year 1993 shall complete and report 10 credit hours. Registrants whose certificate triennial anniversary dates fall in the year 1994 shall complete and report 20 credit hours. All registrants whose certificate triennial anniversary dates fall in the year 1995 and subsequent years shall complete and report the full 30 credit hours.

8.10(5) The board may waive continuing education requirements for qualifying military service personnel upon request.

[ARC 1984C, IAB 4/29/15, effective 6/3/15]

These rules are intended to implement Iowa Code sections 17A.3, 169.4, 169.5, 169.9, 169.20 and 272C.4.

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[◊] Two or more ARCs

CHAPTER 9
TEMPORARY VETERINARY PERMITS

811—9.1(169) Eligibility for a temporary permit.

9.1(1) Temporary educational permit. For the purpose of this subrule, “qualified applicant” means a person who is undertaking internship or residency training at Iowa State University College of Veterinary Medicine. A temporary educational permit may be issued upon application to a qualified applicant who does not also seek an Iowa veterinary license. A temporary educational permit allows the permit holder to act as a licensed veterinarian, including for privately owned animals, but only within the scope of the permit holder’s internship or residency program at Iowa State University College of Veterinary Medicine. Verification of internship or residency shall consist of an endorsement signed by the dean of the school and submitted directly to the board by the school. A temporary educational permit expires upon termination of the permit holder’s internship or residency program, as reported by the dean of the school of veterinary medicine. An initial temporary educational permit may be issued by the board for a term of up to two years. An initial temporary educational permit may be renewed by the board for a term of up to one year. No more than two renewals will be granted to the same person.

9.1(2) Temporary in-state practice permit.

a. A temporary in-state practice permit may be issued upon application to a qualified applicant who does not also seek an Iowa license. For the purpose of this subrule, “qualified applicant” means a person who:

(1) Has graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or has received an ECFVG or PAVE certificate.

(2) Is licensed in good standing in another jurisdiction.

(3) For an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1), the applicant:

1. Has successfully completed the National Board Examination (NBE) if the applicant’s non-Iowa license was issued between December 31, 1964, and December 31, 1979.

2. Has successfully completed the National Board Examination (NBE) and the Clinical Competency Test (CCT) if the applicant’s non-Iowa license was issued between January 1, 1980, and December 31, 2000.

3. Has successfully completed the NAVLE in accordance with rule 811—7.1(169) if the applicant’s non-Iowa license was issued on or after January 1, 2001.

b. The temporary permit shall be issued for a period of no more than 180 days, and no more than one permit shall be issued to a person during each calendar year. The temporary in-state practice permit allows the permit holder to act as a licensed veterinarian in this state. A person may not obtain more than three temporary permits.

811—9.2(169) Application.

9.2(1) An application for a temporary permit shall be made on a form provided by the board. The application shall state whether the applicant is applying for a temporary educational permit or a temporary in-state practice permit. The applicant shall provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine. The applicant shall provide information and shall consent to the release of information to the board from jurisdictions in which the applicant is or has ever been licensed.

9.2(2) The board may require from an applicant or obtain from other sources such other information pertinent to character and education of the applicant as it may deem necessary in order to pass upon the applicant’s qualifications.

9.2(3) In the case of an applicant under subrule 9.1(2), the applicant shall provide evidence of approved continuing education totaling at least 60 hours obtained in the previous three years.

9.2(4) The temporary permit fee and the application fee shall accompany the application.

811—9.3(169) Supervision. Rescinded IAB 9/24/08, effective 10/29/08.

811—9.4(169) Practice without benefit of temporary permit or Iowa license. An applicant for a temporary permit or an Iowa license shall not engage in the practice of veterinary medicine unless and until a temporary permit or Iowa license is granted by the board. Prior to the issuance of the temporary permit or Iowa license, an applicant who is otherwise qualified under rule 9.1(169) may perform within the same scope of authority as a licensed veterinary technician, as provided in 811—Chapter 8.

811—9.5(169) Grounds for discipline and disciplinary procedures. A disciplinary action against a permit holder, including grounds for disciplinary action, is governed by 811—Chapter 10. In addition to the applicable grounds set forth in 811—Chapter 10, an applicant for a temporary permit or an Iowa license who engages in the practice of veterinary medicine prior to the issuance of the temporary permit or Iowa license is subject to denial or revocation of the temporary permit, denial or revocation of the Iowa license, and referral for civil or criminal prosecution, at the board's discretion.

These rules are intended to implement Iowa Code chapter 169.

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CHAPTER 10
DISCIPLINE

[Prior to 2/8/89, see Veterinary Medicine, Board of[842] Ch 6]

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. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a credential holder.

10.2(1) In accordance with Iowa Code section 272C.3(1)“c,” the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for credential holder discipline.

10.2(2) The executive secretary or authorized designee shall investigate 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 shall have 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 must, within 14 days after the 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.

10.3(3) In the event obedience to a subpoena is refused, the requesting party may petition the district court for enforcement.

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

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

811—10.6(17A,169,272C) Grounds for discipline. 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 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. Credential holder professional incompetency. 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.

(5) Habitual intoxication or addiction to the use of drugs, which includes, but is not limited to, the inability of a credential holder to practice with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other types of material which may impair a credential holder's ability to practice with reasonable skill and safety. The board may require a credential holder's completion of a treatment program as a condition of probation or suspension, and shall consider the credential holder's willingness to complete a treatment program when determining the appropriate degree of disciplinary sanction.

(6) Conviction of a felony which is either of the following:

1. One that is related to the credential holder's profession or occupation; or

2. One that would affect the credential holder's ability to practice within the profession.

Conviction of a felony related to the profession or occupation of the credential holder or the conviction of any felony that would affect the credential holder's ability to practice within the profession includes, but is not limited to, the conviction of a public offense in the practice of the credential holder's profession which 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 relates to the credential holder's profession or conviction of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon a credential holder in this state. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

(7) 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.

(8) 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.

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

(10) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

(11) 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 shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

(12) Failure of a credential holder or an applicant for a credential in this state to report, within 30 days, any of the following:

1. Any settlement agreement or voluntary agreement to restrict the practice of veterinary medicine or other applicable activities entered into in another state, district, territory or country; or
2. Any adverse judgment in a malpractice action to which the credential holder is a party; or
3. Any settlement of a claim against the credential holder alleging malpractice.

(13) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

(14) Inability to perform duties for which a credential is required with reasonable skill and safety by reason of a mental or physical impairment.

(15) Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a credential for the duration of the credential unless the board orders otherwise.

(17) Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

(18) Failure to comply with a subpoena issued by the board.

(19) Willful or gross negligence.

(20) Obtaining any fee by fraud or misrepresentation.

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

(22) Noncompliance with the college student aid commission in regard to repayment of student financial aid obligations. The board shall suspend or revoke a credential upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to the procedures contained therein, the following shall apply:

1. The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or credential holder may accept service personally or through authorized counsel.

2. The effective date of revocation or suspension of a credential, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the credential holder.

3. The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the credential holder that the credential will be suspended, unless the credential is already suspended on other grounds. In the event a credential is under suspension, the executive secretary shall notify the credential holder of the board's intention to revoke the credential.

4. Credential holders shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

5. All board fees required for renewal or reinstatement must be paid by the applicant or credential holder, and all continuing education requirements must be met before a credential will be renewed or reinstated after the board has denied the renewal or reinstatement of a credential pursuant to Iowa Code chapter 261.

6. In the event a credential holder timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the renewal or reinstatement of a credential, the board shall count the number of days before the court action was disposed of by the court.

7. The board shall notify the credential holder in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a credential and shall similarly notify the applicant when the credential is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

(23) Having the person's certificate, license, permit, or other credential revoked or suspended, or having any other disciplinary action taken by a licensing or regulating authority of another state, territory, country, or 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 certified 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;

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 the AVMA Principles of Veterinary Medical Ethics.

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. Willfully or repeatedly departing from, or failing to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12; or committing an act contrary to honesty, justice or good morals, whether the act is committed in the course of practice or otherwise, and whether the act is committed within or without this state, where such act substantially relates to the practice of veterinary medicine. It is not necessary for grounds to exist under this paragraph that actual injury to a patient be established.

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.

811—10.7(17A,169,272C) Sanctions. The board has authority to impose the following disciplinary sanctions:

1. Revoke a credential.
2. Suspend a credential until further order of the board or for a specified period.
3. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
4. Impose a period of probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental examination.
8. Impose civil penalties not to exceed \$10,000.
9. Issue a citation and warning.
10. Impose such other sanctions allowed by law as may be appropriate.

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 shall appoint the presiding officer.

10.8(1) The executive secretary shall set the date, time, and location of the hearing and make 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 may not be made until one year has elapsed from the date of the order.

10.11(2) The application shall allege 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 shall rest 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 shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions for reinstating the credential may be imposed.

811—10.12 Reserved.

811—10.13(17A,169,272C) Contested case proceedings. The following rules apply to board activities which are initiated upon determination of probable cause and result in the issuance of a notice of hearing.

811—10.14(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5).

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means, unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

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

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board did not preside.

811—10.15(17A) Time requirements.

10.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

10.15(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 shall afford all parties an opportunity to be heard or to file written arguments.

811—10.16(17A) Notice of hearing. The board shall 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.

10.16(1) The date, time, and location of the hearing shall be set by the board. The credential holder shall be notified at least 30 days prior to the scheduled hearing.

10.16(2) Notification shall 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:

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

b. Notice of hearing shall 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 shall be published at least 30 days prior to the scheduled hearing.

811—10.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board shall designate the presiding officer in accordance with the provisions of Iowa Code section 17A.11.

10.17(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 and appeals must file a written request within 20 days after service of a notice of hearing.

10.17(2) The executive secretary may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

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

10.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

10.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.17(5) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

811—10.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

811—10.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

811—10.20(17A) Disqualification.

10.20(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, secretary or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

10.20(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 10.20(3) and 10.32(9).

10.20(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

10.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.20(1), the party shall 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 shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 10.34(17A).

811—10.21(17A) Consolidation—severance.

10.21(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

10.21(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

811—10.22(17A) Pleadings.

10.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

10.22(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery or the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provision of statutes and rules involved;
- (3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney.

10.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

811—10.23(17A) Service and filing of pleadings and other papers.

10.23(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

10.23(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

10.23(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

10.23(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

10.23(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date)

(Signature)

811—10.24(17A) Discovery.

10.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

811—10.25(17A) Subpoenas.**10.25(1) Issuance.**

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

10.25(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

811—10.26(17A) Motions.

10.26(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

10.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.26(3) The presiding officer may schedule oral argument on any motion.

10.26(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

811—10.27(17A) Prehearing conference.

10.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

10.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

10.27(3) In addition to the requirements of subrule 10.27(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

10.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

811—10.28(17A) Continuances. The executive secretary shall have 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 shall be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.

811—10.29(17A) Hearing procedures.

10.29(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.29(2) All objections shall be timely made and stated on the record.

10.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

10.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

10.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.29(6) Witnesses may be sequestered during the hearing.

10.29(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

811—10.30(17A) Evidence.

10.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

10.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

10.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

10.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.30(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If

the excluded evidence consists of a document or exhibit, it shall be marked as part of an order of proof and inserted in the record.

811—10.31(17A) Default.

10.31(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

10.31(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

10.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 10.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion.

10.31(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

10.31(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

10.31(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

10.31(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 10.34(17A).

811—10.32(17A) Ex parte communication.

10.32(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 10.20(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

10.32(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

10.32(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

10.32(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall

be provided in compliance with rule 10.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.

10.32(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

10.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 10.20(1) or other law and they comply with subrule 10.32(1).

10.32(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 10.29(17A).

10.32(8) Disclosure of prohibited communications. A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

10.32(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 shall 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.

10.32(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board's executive secretary for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

811—10.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

811—10.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

10.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest feasible time. The decision of the board is a final decision.

10.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

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

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

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

10.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

10.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

811—10.35(17A) Appeals.

10.35(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.

10.35(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.

10.35(3) *Notice of appeal.* An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

10.35(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

10.35(5) *Scheduling.* The board of veterinary medicine shall issue a schedule for consideration of the appeal.

10.35(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present an oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

811—10.36(17A) Applications for rehearing.

10.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

10.36(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.36(4), the applicant requests an opportunity to submit additional evidence.

10.36(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

10.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

10.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

811—10.37(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—10.38(17A) Emergency adjudicative proceedings.

10.38(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a credential in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety, or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

10.38(2) Issuance. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- a. Personal delivery;
- b. Certified mail, return receipt requested, to the last address on file with the board;
- c. Certified mail to the last address on file with the board;
- d. First-class mail to the last address on file with the board; or
- e. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

10.38(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.38(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

811—10.39(272C) Disciplinary hearing—fees and costs.

10.39(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.

10.39(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 shall be included as part of the board’s final decision. The order shall direct the credential holder to deliver payment directly to the department of agriculture and land stewardship as provided in subrule 10.39(6).

10.39(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 shall 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 shall be 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 shall 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 shall 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 shall not exceed the expert's customary hourly or daily fee, and shall 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 shall be paid directly by the credential holder.

10.39(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 shall certify any reimbursable costs to the board. The secretary shall 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 shall be served on each party of record at the time of the filing.

10.39(5) Assessment of fees and costs. A final decision of the board imposing disciplinary action against a credential holder shall include the amount of any fee assessed. If the board also assesses costs against the credential holder, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the credential holder.

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

b. The application shall 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.

10.39(6) Payment of fees and costs. Payment for fees and costs assessed pursuant to this rule shall 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.

10.39(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 shall constitute a violation of an order of the board and shall constitute grounds for disciplinary action.

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

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CHAPTER 11
CONTINUING EDUCATION
[Prior to 2/8/89, Veterinary Medicine, Board of(842) Ch 8]

811—11.1(169) Continuing education required for a veterinary licensee.

11.1(1) At least 60 hours of continuing education in courses approved by the board shall be completed within the last three licensing years by each licensee as a condition for license renewal. The licensee has financial responsibility for the cost of continuing education. These credit hours may be obtained by attending board-approved scientific or practice management seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any approved national, state or regional meeting or RACE-approved meeting will be acceptable. One hour of credit may be approved for local meetings where a scientific paper is presented. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 30 hours during any one triennial license period. A maximum of 20 hours during any one triennial license period of continuing education may be achieved by completion of approved distance education courses. A maximum of 20 hours of continuing education during any one triennial license period may be achieved by completion of approved practice management courses.

11.1(2) Each licensee shall obtain the 60 credit hours between July 1 of the year the license was issued and June 30 of the following third year as a condition precedent to license renewal. Continuing education credits in excess of 60 hours for any three-year license period may be carried over to the next triennial license period, but the total number of credit hours carried over shall not exceed 20 hours.

11.1(3) A recent graduate is exempt from meeting continuing education requirements at the time of original licensure and for the first year of practice. For the purpose of this rule, “recent graduate” means a person who has graduated from an accredited or approved school of veterinary medicine, or received a certificate from the ECFVG or PAVE no more than three years prior to application for licensure. If a recent graduate is licensed during the first year of the triennial license period, the licensee is required to complete 40 hours of continuing education for the first license renewal. If a recent graduate is licensed during the second year of the triennial license period, the licensee is required to complete 20 hours of continuing education for the first license renewal. If a recent graduate is licensed during the third year of the triennial license period, the licensee is exempt from meeting continuing education requirements for the first license renewal.

11.1(4) Completion of the continuing education requirement will be reported to the secretary of the board on a form provided by the board, at the time of license renewal. The form must be signed by the licensee and accompanied by a renewal application and the proper renewal fee.

11.1(5) The board may waive continuing education requirements for qualifying military service personnel upon request.

[ARC 1984C, IAB 4/29/15, effective 6/3/15]

811—11.2(169) Exemptions for an inactive veterinary licensee. A licensee residing within or outside Iowa who is not engaged in practice in the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon paying the annual license renewal fee. The licensee shall provide a written application to the board that includes a statement that the applicant will not engage in the practice of veterinary medicine in Iowa without first complying with all the rules governing reactivation after exemption. The application for a certificate of exemption shall be submitted on a form provided by the board.

811—11.3(169) Reactivation of license. A veterinarian whose license has lapsed or been placed on inactive status shall furnish evidence of completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years since the date of the last issuance of the license for which reactivation is sought.

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

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CHAPTER 12
STANDARDS OF PRACTICE
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 9]

811—12.1(169) Veterinarian/client/patient relationships.

12.1(1) The board shall determine, on a case-by-case basis, if a valid veterinarian/client/patient relationship exists. This relationship shall be deemed to exist when all of the following criteria have been met:

a. The licensed veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient and the need for medical treatment, and the client has agreed to follow the instructions of the licensed veterinarian;

b. The licensed veterinarian has sufficient knowledge of the patient to initiate at least a general or preliminary diagnosis of the medical condition of the patient. Sufficient knowledge means that the licensed veterinarian has recently seen or is personally acquainted with the care of the patient by virtue of an examination of the patient or by medically appropriate and timely visits to the premises where the patient is kept; and

c. The licensed veterinarian is readily available or provides for follow-up in case of adverse reactions or failure of the regimen of therapy.

12.1(2) A valid veterinarian/client/patient relationship cannot be established by contact solely based on a telephonic or electronic communication.

12.1(3) Both the licensed veterinarian and the client have the right to establish or decline a valid veterinarian/client/patient relationship. Once the licensed veterinarian and the client have agreed and entered into a relationship, and the licensed veterinarian has begun patient care, the licensed veterinarian may not neglect the patient and must continue to provide professional services related to the patient's injury or illness within the previously agreed limits. As subsequent needs and costs for patient care are identified, the licensed veterinarian and the client must confer and reach agreement on the continued care and responsibility for fees. If the informed client declines future care or declines to assume responsibility for the fees, the relationship may be terminated by either party.

12.1(4) If no ongoing medical condition exists, a licensed veterinarian may terminate a valid veterinarian/client/patient relationship by notifying the client that the licensed veterinarian no longer wishes to serve that patient and client. However, if an ongoing medical or surgical condition exists, the patient should be referred to another licensed veterinarian for diagnosis, care, and treatment and the former attending licensed veterinarian should continue to provide care as needed during the transition.

12.1(5) Concerns about licensed veterinarian or staff safety may result in immediate termination of the veterinarian/client/patient relationship.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

811—12.2(169) Controlled substances, drugs, prescription medications and restricted immunization products. When state or federal law restricts a drug, medication or immunization product intended for use by or on the order of a licensed veterinarian, the licensed veterinarian shall sell, distribute, or order the drug or medication only in the course of the licensed veterinarian's professional practice. A prescription veterinary drug, medication or immunization product shall not be deemed to be used "in the course of the licensed veterinarian's professional practice" unless a valid veterinarian/client/patient relationship exists.

12.2(1) Prescriptions. The order for all such drugs, medications or immunization products shall be accompanied by the licensed veterinarian's original prescription that shows the following:

- a.* Licensed veterinarian's name, address and telephone number;
- b.* Client's name;
- c.* Patient's name or identification;
- d.* Date issued;
- e.* Drug, medication or product name, strength, and quantity;
- f.* Directions for use;
- g.* Number of times the prescription may be refilled;

- h.* Expiration date of the drug, medication or product; and
- i.* Applicable withdrawal period (paragraph 12.2(2)“*d*”) for livestock and poultry.

12.2(2) *Extra-label use of veterinary drugs, medications, and immunization products.* Any extra-label use of veterinary drugs, medications or immunization products shall be by or under the order of a licensed veterinarian only and shall be subject to the following criteria:

- a.* There shall be a veterinarian/client/patient relationship as defined in subrule 12.1(1).
- b.* For drugs or medications used in patients not intended for food, one of the following applies:
 - (1) There are no marketed drugs, medications and immunization products specifically labeled for the condition(s) diagnosed;
 - (2) The approved product is clinically ineffective; or
 - (3) In the licensed veterinarian’s clinical judgment, the labeled dosage is inappropriate for the condition or the extra-label use should result in a better outcome for the patient.
- c.* The health of the treated patient is immediately threatened, or suffering or death would result from a failure to treat the affected patient.
- d.* Appropriate withdrawal period shall be specified when the drugs, medications or immunization products are used in animals intended as food. Extra-label drug use in food-producing animals must follow Food and Drug Administration - Animal Medicinal Drug Use Clarification Act regulations (21 Code of Federal Regulations 530). Licensed veterinarians are encouraged to consult the Food Animal Residue Avoidance Databank (FARAD) or public peer-reviewed documents when determining appropriate withdrawal period.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

811—12.3(169) Prescription drug or medication labeling and packaging. A licensed veterinarian shall comply with all of the following requirements for the storage, handling, dispensing, and administering of a drug or medication.

12.3(1) All prescription drugs, medications and controlled substances must be purchased, maintained, handled, prescribed and dispensed in compliance with state and federal requirements including but not limited to the requirements of the Iowa board of pharmacy, the U.S. Occupational Safety and Health Administration, the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency and the U.S. Drug Enforcement Administration. A valid veterinarian/client/patient relationship must be established before prescription drugs or medications may be dispensed or a prescription released. All drugs or medications administered, prescribed or dispensed must be documented in the patient’s medical record. The sale of veterinary prescription drugs or medications or the extra-label use of any drug, medication or product by a licensed veterinarian without a valid veterinarian/client/patient relationship is not permissible.

12.3(2) All drugs or medications dispensed shall be labeled with the following information:

- a.* Name, telephone number, and address of the veterinary clinic, hospital, or service facility.
- b.* Name of the prescribing licensed veterinarian.
- c.* Date on which the prescription is dispensed.
- d.* Directions for use, including any cautionary statements and withdrawal times when appropriate.
- e.* Species of the patient.
- f.* Name, or identification, or location of the patient.
- g.* Name of the owner.
- h.* Name, strength, and dosage form of the drug or medication. If the drug or medication is a compounded product, all active ingredients must be listed on the label, with corresponding strengths or concentrations of each ingredient.
- i.* Number of units dispensed.
- j.* Expiration date. If the drug or medication is a compounded product with no assigned expiration date, the licensed veterinarian shall determine a beyond-use date as supported by the literature or by the licensed veterinarian’s professional judgment when no such supportive information exists.
- k.* Appropriate withdrawal period for livestock or poultry, when the patient or its product is intended as food.

12.3(3) All drugs or medications dispensed in the original container shall retain the original label and, in addition, shall be labeled with the same information as required in subrule 12.3(2).

12.3(4) All drugs or medications that are dispensed in a container other than the original container shall be placed in a tamper-resistant container unless otherwise requested by the owner or unless the drug or medication is in a form or size that cannot be easily dispensed in a tamper-resistant container.

12.3(5) Drugs or medications which have expired shall be removed from current inventory and shall not be dispensed or sold. Expired drugs or medications shall be disposed of in accordance with local, state and federal regulations.

12.3(6) Drugs or medications shall be dispensed only for specific animals and for specific veterinary medical therapies with the exception of groups of similar animals and other groups such as pet fish, kennels, and catteries for which dispensing shall be done judiciously within a valid veterinarian/client/patient relationship.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

811—12.4(169) Veterinary medical records.

12.4(1) *Controlled substances records.* The licensed veterinarian must maintain a controlled substance log which contains complete, accurate and readily retrievable records of all controlled substances possessed, administered, or dispensed.

a. Each record of a controlled substance which is dispensed must meet all U.S. Drug Enforcement Administration and Iowa board of pharmacy regulations for the controlled substances log.

b. Each log record must include the following information:

- (1) Name or identification of the patient.
- (2) Client's name and address, if not readily available from the licensed veterinarian's records.
- (3) Name, strength and quantity of the controlled substance dispensed.
- (4) Date on which the controlled substance was dispensed.
- (5) Initials of the dispensing licensed veterinarian or authorized auxiliary.
- (6) Name of the prescribing licensed veterinarian.

c. All controlled substances must be kept in a locked storage area, and access to the storage area must be restricted pursuant to state and federal laws and regulations.

d. Each package or container in which a controlled substance is stored or dispensed must be clearly labeled pursuant to the requirements set forth in state and federal laws and regulations.

e. Each package or container in which a controlled substance is stored or dispensed must comply with all state and federal packaging requirements and with rule 811—12.2(169).

12.4(2) *Patient records.* Veterinary medical records are an integral part of veterinary care. Medical records are the property of the veterinary practice. Each licensed veterinarian shall maintain for at least five years an easily retrievable record for each patient that receives veterinary services. The record must be available for inspection by the client during normal business hours. The information within veterinary medical records is privileged and confidential and shall not be released except by court order, a public health emergency or consent of the client. The licensed veterinarian in charge shall provide a copy of the complete record to the client not later than two business days after the licensed veterinarian or practice receives from the client a request for the record. A licensed veterinarian or veterinary practice may have an additional three business days to provide a copy of nondigital diagnostic images. The licensed veterinarian may charge reasonable and customary fees for the copying of records.

a. Records required for patients defined as "livestock" in Iowa Code section 717.1(4) include the following:

- (1) Name, address and telephone number of the client.
- (2) Name or identity of the patient, pen, herd, flock, or group, including the identification number, if any.
- (3) Date of service.
- (4) Documentation of client consent.
- (5) Diagnosis or condition at the beginning of treatment of the patient, including results of tests.
- (6) Procedures/indications.

(7) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.

(8) Withdrawal period.

(9) Record of diagnostic images taken.

(10) Name of attending licensed veterinarian.

b. Records required for other patients include the following:

(1) Name, address and telephone number of the client.

(2) Name and identity of the patient, including the identification number, if any.

(3) Date of birth (or estimated age), sex, species and breed of patient.

(4) Dates of care, custody or treatment of the patient.

(5) A history of the patient's condition as it pertains to the patient's medical status.

(6) Documentation of client consent.

(7) Diagnosis or condition at the beginning of treatment of the patient, including results of tests and body weight.

(8) Surgery record, including preanesthesia medication, anesthesia, and the procedure performed.

(9) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.

(10) Progress and disposition of the case.

(11) Record of diagnostic images taken.

(12) Name of attending licensed veterinarian.

12.4(3) Stored diagnostic images.

a. Each stored diagnostic image must be identified with the following information:

(1) The name of the licensed veterinarian or facility that took the diagnostic image.

(2) The name or identifying number, or both, of the patient.

(3) The name of the client.

(4) The date on which the diagnostic image was taken.

(5) The anatomical orientation depicted by the diagnostic image.

b. Stored diagnostic images must be retained for at least five years.

c. A stored diagnostic image of the patient or a copy must be released, upon the written or verbal request, to another licensed veterinarian who has the authorization of the client. Original diagnostic images shall be returned in a reasonable time.

12.4(4) General anesthesia. General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus. The following standards relating to general anesthesia must be adhered to:

a. Within 12 hours prior to the administration of a general anesthetic, the patient must receive a physical examination, with the results noted in the patient's medical records.

b. The patient under general anesthesia must be under observation for a length of time appropriate to the species for the patient's safe recovery.

c. The licensed veterinarian must provide a method of respiratory monitoring that may include observing the patient's chest movements, observing the rebreathing bag, or using a respirometer.

d. The licensed veterinarian must provide a method of cardiac monitoring which may include the use of a stethoscope or electrocardiograph monitor.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

811—12.5(169) Veterinary facilities.

12.5(1) Facility standards. The following standards shall apply to all facilities used by a licensed veterinarian to provide veterinary services.

a. Facilities for treatment or hospitalization. In a facility where patients are examined and retained for treatment or hospitalization, the following must be provided:

(1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.

(2) Nonporous tabletops, countertops and floor coverings which can be adequately cleaned and disinfected.

(3) The ability to house patients separately and maintain sanitary conditions.

(4) Appropriate separation of patients with known or suspected infectious and contagious diseases from patients not known to have such diseases in a manner that reasonably guards against transmission of disease.

(5) Provision for daily exercise of patients unless the primary enclosure is of sufficient size to provide exercise.

(6) Exercise areas that are cleaned a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors.

(7) A sanitary area for performing surgeries under sterile conditions. If sterile surgical procedures are performed on the premises, the licensed veterinarian must maintain the following at all times:

1. Appropriate sterile surgical packs including drapes, sponges and instrumentation for use in each procedure.

2. For each sterile surgical procedure, equipment sterilized and surgical packs properly prepared for sterilization sufficient to kill microorganisms.

3. Clean attire, masks, and gloves for use in any sterile procedure.

(8) Oxygen and equipment necessary to administer oxygen to the types of patients treated in the facility.

(9) Capability to provide diagnostic radiological images in the facility or through an outside facility.

(10) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

b. Facilities for services. Veterinary service facilities where patients are only examined or provided vaccinations must provide the following:

(1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.

(2) Nonporous tabletops, countertops and floor coverings which can be adequately cleaned and disinfected.

(3) A secure and sanitary area for the storage of instruments, drugs and medications.

(4) Cooling/heating equipment for the storage of drugs, medications and immunization products.

(5) Capability to provide diagnostic radiological images in the facility or through an outside facility.

(6) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

c. Mobile clinics. Mobile clinics are self-contained units for small animal, nonlivestock or nonpoultry patients and shall be equipped with the following:

(1) Hot and cold water.

(2) Nonporous tabletops, countertops and floor coverings which can be adequately cleaned and disinfected.

(3) An adequate power source for diagnostic equipment.

(4) A collecting tank for disposal of waste materials.

(5) Adequate lighting.

(6) Adequate heating, cooling and ventilation.

(7) Sterile instrumentation which meets the requirements of the level of surgery to be performed.

(8) Separate compartments for the transportation or holding of patients.

(9) A secure and sanitary area for the storage of instruments, drugs and medications.

(10) Cooling/heating equipment for the storage of drugs, medications and immunization products.

d. House/farm call units. House/farm call units are not self-contained units and must be equipped with or have access to all of the following:

(1) Water.

(2) Cooling/heating equipment for the storage of drugs, medications and immunization products.

(3) A secure and sanitary area for the storage of instruments, drugs and medications.

e. Emergency veterinary hospitals. “Emergency veterinary hospital” means an animal hospital which provides emergency treatment to an ill or injured patient. Any facility advertising as an emergency facility shall have a licensed veterinarian and appropriate support staff on the premises during the hours of operation. Any facility which advertises using phrases similar or identical to “24-hour emergency veterinary hospital,” “Emergency,” “Open 24 hours,” or “Day or night care” must have treatment services continuously available.

12.5(2) Safety and sanitation standards. A veterinary facility must have a safe and sanitary environment that:

- a.* Protects the health of the patients and guards against the transmission of infection.
- b.* Provides for proper routine disposal of waste materials in compliance with all applicable local, state, and federal laws and regulations and for proper disposal of hypodermic devices, sharps and biomedical waste. Any person who is authorized to use hypodermic devices and sharps shall dispose of them in accordance with applicable local, state and federal regulations. Biomedical waste should be disposed of in accordance with applicable local, state and federal regulations.
- c.* Provides for proper sterilization or sanitation of all equipment used in diagnosis, treatment or surgery.
- d.* Ensures the maintenance of proper temperature and ventilation of the indoor facility.
- e.* Provides adequate lighting appropriate for the task being performed.
- f.* Includes legal and sanitary methods for the disposal or storage of deceased patients.
- g.* Meets the standards for radiological procedures as set by the Iowa department of public health.

12.5(3) Resources. A library of current journals or textbooks, or Internet access which provides readily accessible reference materials shall be available.

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CHAPTER 13
COLLECTION PROCEDURES

811—13.1(169,252J,272D) Licensing actions. In addition to other reasons specified by statute or rule, the board may refuse to issue a credential or may revoke, suspend, or not renew any credential for which it has jurisdiction if the board is in receipt of a certificate of noncompliance from the child support recovery unit pursuant to the procedures set forth in Iowa Code chapter 252J or from the centralized collection unit of the department of revenue pursuant to the procedures set forth in Iowa Code chapter 272D.

An applicant or credential holder whose application is denied or whose credential is denied, suspended, or revoked because of receipt by the board of a certificate of noncompliance issued by the child support recovery unit or by the centralized collection unit of the department of revenue shall be subject to the provisions of rule 811—13.1(169,252J,272D). Procedures specified in 811—Chapter 10 for contesting board actions shall not apply.

[ARC 9512B, IAB 5/18/11, effective 6/22/11]

811—13.2(169,252J,272D) Collection procedures. The following procedures shall apply to actions taken by the board on a certificate of noncompliance pursuant to Iowa Code chapter 252J or Iowa Code chapter 272D:

13.2(1) The notice required by Iowa Code section 252J.8 or by Iowa Code section 272D.8 shall be served upon the applicant or credential holder by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or credential holder may accept service personally or through authorized counsel.

13.2(2) The effective date of revocation or suspension of a credential or the denial of the issuance or renewal of a credential, as specified in the notice required by Iowa Code section 252J.8 or by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the credential holder or applicant.

13.2(3) Applicants and credential holders shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J or the centralized collection unit actions taken in connection with Iowa Code chapter 272D. Applicants and credential holders shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9 or pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit or by the centralized collection unit of the department of revenue.

13.2(4) All board fees for applications, credential renewals or reinstatements must be paid by the applicant or credential holder before a credential will be issued, renewed or reinstated after the board has denied the issuance or renewal of a credential or has suspended or revoked a credential pursuant to Iowa Code chapter 252J or pursuant to Iowa Code chapter 272D.

13.2(5) If an applicant or credential holder timely files a district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9 or Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a credential, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

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These rules are intended to implement Iowa Code chapters 169, 252J and 272D.

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CHAPTER 14
WAIVER OR VARIANCE OF RULES

811—14.1(17A,169) Definition. For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

811—14.2(17A,169) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

811—14.3(17A,169) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

811—14.4(17A,169) Criteria for waiver or variance. In response to a petition completed pursuant to rule 811—14.6(17A,169), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

811—14.5(17A,169) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

14.5(1) Credential application. If the petition relates to a credential application, the petition shall be made in accordance with the filing requirements for the credential in question.

14.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

14.5(3) Other. If the petition does not relate to a credential application or a pending contested case, the petition may be submitted to the board’s secretary.

811—14.6(17A,169) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 811—14.4(17A,169). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or credential affected by the proposed waiver, including a description of each affected credential

held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or credential within the last five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

811—14.7(17A,169) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary, a committee of the board, or a quorum of the board.

811—14.8(17A,169) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

811—14.9(17A,169) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

811—14.10(17A,169) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

14.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

14.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

14.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

14.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

14.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

14.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right

to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

14.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

14.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

14.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

811—14.11(17A,169) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

811—14.12(17A,169) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. In addition, the report shall identify the duration and the expiration date of any waiver granted. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

811—14.13(17A,169) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

811—14.14(17A,169) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

811—14.15(17A,169) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

811—14.16(17A,169) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 169.

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