

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Created by 1986 Iowa Acts, chapter 1245, under the "umbrella" of the Department of Commerce[181]; renamed in 2006 Iowa Acts, House File 2521, section 52

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CHAPTER 1
ORGANIZATION AND OPERATION

193—1.1(546) Purpose of chapter 1. This chapter describes the organization and operation of the professional licensing and regulation bureau of the banking division (hereinafter referred to as the “bureau”), including the office where, and the means by which, any interested person may obtain public information and make submittals or requests.

193—1.2(546) Scope of rules. The rules for the bureau are promulgated under Iowa Code chapter 17A and sections 546.3 and 546.10 and shall apply to all matters before the bureau. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the various boards of the bureau from any duty under the laws of this state.

193—1.3(546) Definitions.

“*Administrator*” means the superintendent of banking.

“*Board*” means an examining board or commission within the professional licensing and regulation bureau.

“*Bureau*” means the professional licensing and regulation bureau of the banking division of the department of commerce.

“*Department*” means the department of commerce.

“*License*” means any license, registration, certificate, or permit that may be granted by an examining board or commission within the professional licensing and regulation bureau.

“*Licensee*” means any person granted a license by an examining board or commission within the professional licensing and regulation bureau.

“*Person*” means an individual, corporation, partnership, association, professional corporation, licensee, certificate holder, or registrant.

“*Staff*” means employees assigned to the professional licensing and regulation bureau.

193—1.4(546) Purpose of the bureau. The bureau exists to coordinate the administrative support for the following six professional licensing boards:

1.4(1) The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of three professional engineers, two land surveyors, and two public members. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C] in the Iowa Administrative Code.

1.4(2) The accountancy examining board is an eight-member board appointed by the governor and confirmed by the senate. The board is composed of five certified public accountants, two public members, and one licensed public accountant. The board administers Iowa Code chapter 542, Public Accountants, and board rules published under agency number [193A] in the Iowa Administrative Code.

1.4(3) The real estate commission is a seven-member commission appointed by the governor and confirmed by the senate. It is composed of five members, one of whom must be a salesperson, licensed under Iowa Code chapter 543B and two public members. The commission administers Iowa Code chapters 543B, Real Estate Brokers and Salespersons; 543C, Sales of Subdivided Land Outside of Iowa; 557A, Time-Shares; and commission rules published under agency number [193E] in the Iowa Administrative Code.

1.4(4) The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five licensed architects and two public members. The board administers Iowa Code chapter 544A, Licensed Architects, and board rules published under agency number [193B] in the Iowa Administrative Code.

1.4(5) The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five professional landscape architects and two

public members. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D] in the Iowa Administrative Code.

1.4(6) The interior design examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered interior designers and two public members. The board administers Iowa Code chapter 544C, Registered Interior Designers, and board rules published under agency number [193G] in the Iowa Administrative Code.

[ARC 2754C, IAB 10/12/16, effective 11/16/16; ARC 4250C, IAB 1/16/19, effective 2/20/19]

193—1.5(546) Offices and communications. Correspondence and communications with the bureau or the boards in the bureau shall be addressed or directed to their offices at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. Each of the boards may be contacted through the bureau telephone number (515)725-9022.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—1.6(546) Responsibilities of the boards. All of the boards in the bureau retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters. Each board shall adopt rules pursuant to Iowa Code chapter 17A. Decisions by each board are final agency actions for purposes of Iowa Code chapter 17A.

193—1.7(546) Responsibilities of the administrator.

1.7(1) To make rules pursuant to Iowa Code chapter 17A to implement bureau duties except to the extent that rule-making authority is vested in the boards in the bureau.

1.7(2) To carry out policy-making and enforcement duties assigned to the bureau under the law.

1.7(3) To hire, allocate, develop, and supervise members of the staff employed to perform the duties assigned to the bureau and the boards in the bureau, including hiring a bureau chief to perform such administrative duties as may be assigned by the administrator and designating staff to act as the executive officer, who may be referred to as the board administrator, for and lawful custodian of the records of each board in the bureau.

1.7(4) To coordinate the development of an annual budget for the bureau and the boards in the bureau.

1.7(5) To supervise and direct personnel and other resources to accomplish duties assigned to the bureau by law.

1.7(6) To authorize expenditures from any appropriation or fund established on behalf of the bureau.

1.7(7) Except to the extent that decision-making authority is vested in the boards in the bureau or other body, decisions of the administrator are final agency actions pursuant to Iowa Code chapter 17A.

1.7(8) Except to the extent otherwise vested in the boards in the bureau, the administrator has the authority to establish fees assessed to the regulated industry.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—1.8(546) Custodian of records, filings, and requests for public information. Unless otherwise specified by the rules of the boards in the bureau, the bureau is the principal custodian of its own orders, statements of law or policy issued by the bureau, legal documents, and other public documents on file with the bureau.

Any interested party may examine all public records promulgated or maintained by the bureau at its offices during regular business hours. The offices of the bureau and the boards in the bureau are open from 8 a.m. until 4:30 p.m., Monday through Friday. The offices are closed Saturdays, Sundays, and official state holidays.

193—1.9(272C,542,542B,543B,544A,544B,544C) Applicant contact information. In addition to the mailing address(es) that must be provided in accordance with the individual board's rules, applicants of the boards within the bureau must provide a telephone number and, if applicable, an email address. The boards within the bureau will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location.

[ARC 2754C, IAB 10/12/16, effective 11/16/16; ARC 4250C, IAB 1/16/19, effective 2/20/19]

193—1.10(272C,542,542B,543B,544A,544B,544C) Newsletter.

1.10(1) The administrator or administrator's designee may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, board news, and matters related thereto.

1.10(2) When boards are required or allowed to notify licensees about matters such as license renewal, the boards may include such notices in the newsletter.

[ARC 2754C, IAB 10/12/16, effective 11/16/16; ARC 4250C, IAB 1/16/19, effective 2/20/19]

193—1.11(272C,542,542B,543B,544A,544B,544C) Applications. Unless otherwise regulated by an individual board's rules, abandoned applications shall be deemed withdrawn. An application is abandoned if the applicant has not accessed or modified the application through the bureau's electronic licensing database within the preceding six months.

[ARC 4250C, IAB 1/16/19, effective 2/20/19]

These rules are intended to implement Iowa Code section 546.10.

[Filed 4/30/87, Notice 3/11/87—published 5/20/87, effective 6/24/87]

[Filed without Notice 5/8/92—published 5/27/92, effective 7/1/92]

[Filed 2/4/99, Notice 12/30/98—published 2/24/99, effective 3/31/99]

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 9/11/03, Notice 5/28/03—published 10/1/03, effective 11/5/03]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed 5/28/08, Notice 4/23/08—published 6/18/08, effective 7/23/08]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

[Filed ARC 4250C (Notice ARC 4007C, IAB 9/26/18), IAB 1/16/19, effective 2/20/19]

CHAPTER 2
ALLOCATION OF DISCIPLINARY FEES AND COSTS

193—2.1(272C) Allocation of disciplinary fees and costs.

2.1(1) Definitions.

“*Board(s)*” shall include the professional licensing boards and commission within the professional licensing and regulation bureau of the banking division of the department of commerce.

“*Bureau*” means the professional licensing and regulation bureau of the banking division of the department of commerce.

2.1(2) All hearing fees and costs assessed by the boards shall be paid directly to the bureau and shall be held in a separate fund administered by the administrator.

2.1(3) The administrator shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the bureau. Distributions from the fund shall be made upon the request of a board and in the sole discretion of the administrator. A distribution received by a board under this chapter shall be used only for expenditures related to disciplinary hearings.

2.1(4) The administrator shall consider the following factors in exercising discretion as to whether to distribute funds to a requesting board:

a. The remaining funds in the board’s allocated appropriation for disciplinary hearings in that fiscal year.

b. The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings.

c. Whether the board has adopted and implemented hearing cost recovery rules.

2.1(5) The administrator shall, within 45 days from the end of the fiscal year, distribute to each board a percentage of the remaining fees and costs that is equal to the percentage of that board’s total allocated budget in relation to the bureauwide total budget for all professional licensing boards governed by this chapter.

2.1(6) The fees and costs allocated back to the individual professional licensing boards shall be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to each professional board shall be applied to the costs incurred by each profession for prosecution of contested cases which could result in disciplinary action.

This rule is intended to implement Iowa Code subsection 272C.6(6).

[Filed 4/7/95, Notice 3/1/95—published 4/26/95, effective 5/31/95]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

CHAPTER 3
VENDOR APPEALS

193—3.1(546) Purpose. This chapter outlines a uniform process for vendor appeals for all boards in the bureau. The process shall be applicable only when board services are acquired through a formal bidding procedure not handled by the department of administrative services or the office of the chief information officer.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—3.2(546) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by e-mail. The notice of appeal must be received by the board within the time frame specified to be considered timely. The notice of appeal must state the vendor's complete legal name, street address, telephone number, e-mail address and the specific grounds upon which the vendor challenges the board's award, including legal authority, if any. The notice of appeal commences a contested case.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—3.3(546) Procedures for vendor appeals. Each board's procedures for licensee disciplinary hearings shall be applicable, except as provided in these rules.

3.3(1) Upon receipt of a notice of vendor appeal, the board shall issue a written notice of the date, time and location of the appeal hearing to both the aggrieved vendor or vendors and the successful vendor. Service of the written notice of hearing shall be sent to the e-mail address provided by the appellant unless the appellant specifically requests that notice be mailed or sent by certified mail. Hearing shall be held within 60 days of the date the notice of appeal was received by the board.

3.3(2) All hearings shall be open to the public.

3.3(3) Discovery requests, if any, must be served by the parties within ten days of the filing of the notice of appeal. Discovery responses or objections are due at least seven business days prior to hearing.

3.3(4) At least three business days prior to the hearing, the parties shall exchange witness and exhibit lists. The parties shall be limited at hearing to the witnesses and exhibits timely disclosed unless the board finds good cause to allow additional witnesses or exhibits at hearing.

3.3(5) The hearing, at the option of the board or administrative law judge, may be conducted in person, by telephone, or on the Iowa communications network. When not conducted in person, all exhibits must be delivered to the board or administrative law judge no less than two business days prior to the hearing.

3.3(6) Oral proceedings shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs. Copies of tapes of oral proceedings or transcripts of certified shorthand reporters shall be paid for by the requester.

3.3(7) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay. The filing of the petition for stay does not automatically stay the award. The board may grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public or licensees will not be significantly harmed. A stay may be vacated at any time upon application by any party or the board on its own motion with prior notice to all parties.

3.3(8) The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6) and any other relevant procedural documents regardless of their form.

3.3(9) The board or administrative law judge may request the parties to submit proposed findings and conclusions or briefs.

3.3(10) Any request for continuance must be in writing, specifying the grounds, and filed no later than seven business days prior to hearing.

3.3(11) Requests for rehearing shall be made to the board within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision is not necessary to exhaust administrative remedies.

3.3(12) Judicial review of the board's final decision may be sought in accordance with the contested case provisions of Iowa Code section 17A.19.
[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—3.4(546) Procedures for board referral to an administrative law judge. The board, in its discretion, may refer a vendor appeal to the department of inspections and appeals for hearing before a qualified administrative law judge. The hearing procedures shall be substantially the same, but the ruling of an administrative law judge acting as the sole presiding officer shall constitute a proposed decision. Board review of a proposed decision shall be according to Iowa Code subsection 17A.15(2) and this chapter. Nothing in this rule shall prevent the board from hearing a vendor appeal with the assistance of an administrative law judge. This rule merely authorizes an alternative procedure. The appealing vendor may also request that an administrative law judge act as presiding officer pursuant to 193—subrule 7.10(2).

3.4(1) The proposed decision shall become the final decision of the board 14 days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision, or the board seeks review on its own motion.

3.4(2) Notice of an appeal for review of a proposed decision or notice of the board's own review shall be mailed to all parties by the board's executive officer. Within 14 days after mailing of the notice of appeal or the board's review, any party may submit to the board exceptions to and a brief in support of or in opposition to the proposed decision, copies of which shall be mailed by the submitting party to all other parties to the proceeding. The board's executive officer shall notify the parties if oral argument will be heard and shall specify whether oral argument will be heard in person, by telephone or on the Iowa communications network. The executive officer shall schedule the board's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the board's own review.

3.4(3) Failure to appeal a proposed decision will preclude judicial review unless the board reviews on its own motion.

3.4(4) Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

3.4(5) Each party shall have the opportunity to file exceptions and present briefs. The executive officer may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the executive officer shall notify all parties of the date, time and location at least ten days in advance.

3.4(6) The board shall not receive any additional evidence, unless it grants an application to present additional evidence. Any such application must be filed by a party no less than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the board shall order the conditions under which it shall be presented.

3.4(7) The board's final decision shall be in writing and it may incorporate all or part of the proposed decision.

These rules are intended to implement Iowa Code section 546.10.

[Filed 11/6/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

CHAPTER 4
SOCIAL SECURITY NUMBERS AND PROOF OF LEGAL PRESENCE

193—4.1(546) Purpose. This chapter outlines a uniform process for applicants and licensees of all boards in the bureau to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C.1621). This chapter also addresses the requirement that a license applicant provide a social security number under 42 U.S.C. 666(a)(13) and Iowa Code sections 252J.8(1) and 272D.8(1) for purposes including the collection of child support obligations and debts owed to the state of Iowa.

[ARC 0490C, IAB 12/12/12, effective 1/16/13; ARC 4828C, IAB 12/18/19, effective 1/22/20]

193—4.2(546) Applicability.

4.2(1) After July 1, 1999, applicants and licensees who are U.S. citizens or permanent resident aliens may be requested to produce evidence of their lawful presence in the United States as a condition of initial licensure or license renewal. If requested, submission of evidence will be required once. Acceptable evidence (List A) is outlined in subrule 4.3(1).

4.2(2) After July 1, 1999, applicants and licensees residing in the United States, other than those described in subrule 4.2(1) above, may be requested to provide evidence of lawful presence in the United States at the time of initial licensure and with every subsequent renewal. Acceptable evidence (List B) is outlined in subrule 4.3(2).

4.2(3) Evidence shall not be required by foreign national applicants or licensees who are not physically present in the United States.

193—4.3(546) Acceptable evidence. The bureau shall accept as proof of lawful presence in the United States documents outlined in Lists A and B below. The bureau will not routinely retain the evidence sent and will not return the evidence once submitted. Documents may be retained in computer “imaged” format. Legible copies will be accepted. Original documents will not be required unless a question arises concerning the documentation submitted.

4.3(1) List A—acceptable documents to establish U.S. citizenship.

a. A copy of a birth certificate issued in or by a city, county, state, or other governmental entity within the United States or its outlying possessions.

b. U.S. Certificate of Birth Abroad (FS-545, DS-135) or a Report of Birth Abroad of U.S. Citizen (FS-240).

c. A birth certificate or passport issued from:

1. Puerto Rico, on or after January 13, 1941.
2. Guam, on or after April 10, 1989.
3. U.S. Virgin Islands, on or after February 12, 1927.
4. Northern Mariana Islands after November 4, 1986.
5. American Samoa.
6. Swain’s Island.
7. District of Columbia.

d. A U.S. passport (expired or unexpired).

e. Certificate of Naturalization (N-550, N-57, N-578).

f. Certificate of Citizenship (N-560, N-561, N-645).

g. U.S. Citizen Identification Card (I-79, I-197).

h. An individual Fee Register Receipt (Form G-711) that shows that the person has filed an application for a New Naturalization or Citizenship Paper (Form N-565).

i. Any other acceptable document which establishes a U.S. place of birth or indicates U.S. citizenship.

4.3(2) List B—acceptable documents to establish alien status.

a. An alien lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA). Evidence includes:

1. INS Form I-551 (Alien Registration Receipt Card commonly known as a “green card”); or
2. Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.
- b.* An alien who is granted asylum under Section 208 of the INA. Evidence includes:
 1. INS Form I-94 annotated with stamp showing grant of asylum under Section 208 of the INA.
 2. INS Form I-668B (Employment Authorization Card) annotated “274a.12(a)(5).”
 3. INS Form I-776 (Employment Authorization Document) annotated “A5.”
 4. Grant Letter from the Asylum Office of INS.
 5. Order of an immigration judge granting asylum.
- c.* A refugee admitted to the United States under Section 207 of INA. Evidence includes:
 1. INS Form I-94 annotated with stamp showing admission under Section 207 of the INA.
 2. INS Form I-668B (Employment Authorization Card) annotated “274a.12(a)(3).”
 3. INS Form I-766 (Employment Authorization Document) annotated “A3.”
 4. INS Form I-571 (Refugee Travel Document).
- d.* An alien paroled into the United States for at least one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA.
- e.* An alien whose deportation is being withheld under Section 243(h) of the INA (as in effect immediately prior to September 30, 1996) or Section 241(b)(3) of such Act (as amended by Section 305(a) of Division C of Public Law 104-2-8). Evidence includes:
 1. INS Form I-668 (Employment Authorization Card) annotated “271a.12(a)(10).”
 2. INS Form I-766 (Employment Authorization Document) annotated “A10.”
 3. Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.
- f.* An alien who is granted conditional entry under Section 203(a)(7) of the INA as in effect prior to April 1, 1980. Evidence includes:
 1. INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA.
 2. INS Form I-668 (Employment Authorization Card) annotated “274a.12(a)(3).”
 3. INS Form I-776 (Employment Authorization Document) annotated “A3.”
- g.* An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980). Evidence includes:
 1. INS Form I-551 (Alien Registration Receipt Card, commonly known as a “green card”) with the code CU6, CU7, or CH6.
 2. Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with code CU6 or CU7.
 3. INS Form I-94 with stamp showing parole as “Cuban/Haitian Entrant” under Section 212(d)(5) of the INA.
- h.* An alien paroled into the United States for less than one year under Section 212(d)(5) of the INA. Evidence includes INS Form I-94 showing this status.
- i.* An alien who has been declared a battered alien. Evidence includes INS petition and supporting documentation.
- j.* Any other documentation acceptable under the INA.

193—4.4(252J,272D,546) Social security number disclosure.

4.4(1) An individual applying for a license from a board within the bureau shall disclose the individual’s social security number on the application form unless:

- a.* The applicant demonstrates to the satisfaction of the board that the applicant does not possess and is not eligible for a social security number, or
- b.* The applicant demonstrates or attests that the applicant is in the process of applying for a social security number and will provide such number within 60 days of the date on which the applicant submits the application to the board. The license of an applicant who is licensed pursuant to this subrule may be revoked for failure to provide a valid social security number within 60 days of the date on which the application was filed.

4.4(2) An applicant who does not possess a social security number and is not eligible for a social security number will be required to demonstrate lawful presence in the United States, if applicable, and provide government-issued photo identification as needed to verify identity. If circumstances change and the applicant or licensee later attains a social security number, the applicant or licensee shall disclose the social security number to the board within 30 days of the date on which the social security number is issued.

[ARC 0490C, IAB 12/12/12, effective 1/16/13; ARC 4828C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 546.

[Filed 2/4/99, Notice 12/30/98—published 2/24/99, effective 3/31/99]

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed ARC 0490C (Notice ARC 0345C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]

[Filed ARC 4828C (Notice ARC 4680C, IAB 10/9/19), IAB 12/18/19, effective 1/22/20]

CHAPTER 5
WAIVERS AND VARIANCES FROM RULES

193—5.1(17A,546) Definitions. For purposes of this chapter, “a waiver or variance” means action by a 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.” “Board” includes every board and commission in the professional licensing and regulation bureau of the banking division of the department of commerce.

193—5.2(17A,546) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by boards 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.

193—5.3(17A,546) Applicability. A 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. A board may not waive requirements created or duties imposed by statute.

193—5.4(17A,546) Criteria for waiver or variance. In response to a petition completed pursuant to rule 193—5.6(17A,546), a 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; and
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.

193—5.5(17A,546) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

5.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

5.5(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.

5.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive officer.

193—5.6(17A,546) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, e-mail address, and telephone number of the entity or person for whom a waiver is 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 193—5.4(17A,546). 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 license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the past five years.

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

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

9. The name, address, e-mail 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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.7(17A,546) 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 officer, a committee of the board, or a quorum of the board.

193—5.8(17A,546) 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. Notice may be provided by e-mail or similar electronic means.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.9(17A,546) 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 board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

193—5.10(17A,546) 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.

5.10(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.

5.10(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.

5.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

5.10(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.

5.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

5.10(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.

5.10(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.

5.10(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.

5.10(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. Service of the written notice shall be sent to the e-mail address provided by the petitioner unless the petitioner specifically requests a mailed copy.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.11(17A) Interim rulings.

5.11(1) The board chair, or vice chair, if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

5.11(2) The board chair or vice chair may call a special telephonic meeting of the board if a ruling cannot be made under subrule 5.11(1) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

5.11(3) Interim rulings are effective when made, but they shall also be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.12(17A,546) 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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.13(17A,546) Summary reports. Semiannually, each 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. 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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.14(17A,546) Cancellation of a waiver. A waiver issued by a 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; or

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.
[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.15(17A,546) 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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.16(17A,546) 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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—5.17(17A,546) 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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

These rules are intended to implement Iowa Code sections 17A.9A and 546.10.

[Filed 2/15/01, Notice 12/27/00—published 3/7/01, effective 4/11/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

CHAPTER 6
INVESTIGATORY SUBPOENAS

193—6.1(17A,272C,542,542B,543B,543D,544A,544B,544C) Investigatory subpoena authority. Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), all boards, as defined in rule 193—7.1(17A,542,542B,543B,543D,544A,544B,544C), have the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law. To ensure consistency in procedure, all boards will issue investigatory subpoenas according to the uniform procedures set forth in rule 193—6.2(17A,272C,542,542B,543B,543D,544A,544B,544C). Given the range of investigative options otherwise utilized by each board, additional detail on investigative procedures is provided separately in each board's individual rules.

193—6.2(17A,272C,542,542B,543B,543D,544A,544B,544C) Investigatory subpoena procedures.

6.2(1) The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence which the officer determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

6.2(2) A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 6.2(1) have been satisfied.

6.2(3) Each subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production, or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the executive officer or designee;
- f. The date of issuance;
- g. A return of service.

6.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

6.2(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to

ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

6.2(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193—7.31(17A) and 7.32(17A), provided that all of the time frames are reduced by one-half.

6.2(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

These rules are intended to implement Iowa Code chapters 17A, 272C, 542, 542B, 543B, 543D, 544A, 544B, and 544C.

[Filed 4/25/01, Notice 3/7/01—published 5/16/01, effective 6/20/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

CHAPTER 7
CONTESTED CASES

193—7.1(17A,542,542B,543B,543D,544A,544B,544C) Definitions. Except where otherwise specifically defined by law:

“*Board*” includes the engineering and land surveying examining board (Iowa Code chapter 542B), the accountancy examining board (Iowa Code chapter 542), the real estate commission (Iowa Code chapter 543B), the real estate appraiser examining board (Iowa Code chapter 543D), the architectural examining board (Iowa Code chapter 544A), the landscape architectural examining board (Iowa Code chapter 544B), and the interior design examining board (Iowa Code chapter 544C).

“*Contested case*” means any adversary proceeding before a board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C; an adversary proceeding against a nonlicensee pursuant to Iowa Code section 542.14, 542B.27, 543B.34, 543D.21, or 544A.15; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

“*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 by rule or in the order.

“*License*” means a license, registration, certificate, permit or other form of practice permission required or authorized by Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C.

“*Party*” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

“*Presiding officer*” means the board and, when applicable, a panel of board members or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

“*Probable cause*” means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

“*Quorum*” means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified and, for the engineering and land surveying examining board, only upon an affirmative vote of at least five members of the board.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.2(17A,542,542B,543B,543D,544A,544B,544C,546) Scope and applicability of the Iowa Rules of Civil Procedure. This chapter applies to contested cases conducted by all boards in the bureau. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.3(17A,272C) Commencement of a contested case and probable cause. A contested case in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.4(17A,272C) Informal settlement. The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing

and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193—7.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 193—7.42(546,272C).

193—7.5(17A) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. The statement of charges shall be incorporated within or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

193—7.6(17A,272C) Notice of hearing.

7.6(1) Contents of notice of hearing. Unless the hearing is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted;
5. Identification of all parties including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent's counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement after charges are filed;
8. Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections and appeals;
9. If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 193—7.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections and appeals; and
10. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193—7.9(17A,272C) within 20 days after service of the notice of hearing.
11. If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding.
12. Information on who to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter.
13. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193—7.21(17A,272C).
14. The mailing address and e-mail address for filing with the board and notice of the option of e-mail service as provided in subrule 7.17(6).

7.6(2) Service of notice of hearing. Service of notice of hearing on a licensee to commence a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to commence all other contested cases may additionally be made by certified mail, return receipt requested.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.7(13,272C) Legal representation.

7.7(1) Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

7.7(2) The respondent or applicant may be represented by an attorney. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with **Iowa Court Rule 31.14**. Business entities may be represented in a contested case by a nonlawyer partner, officer, director, shareholder, member, director, or other owner or manager.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.8(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

193—7.9(17A,272C) Form of answer.

7.9(1) Unless otherwise provided in the notice of hearing, the answer shall contain the following information:

7.9(2) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.10(17A,272C) Presiding officer.

7.10(1) The presiding officer in all licensee disciplinary contested cases shall be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code subsections 272C.6(1) and (2). When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 7.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

7.10(2) In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case 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 which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board 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 a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

7.10(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

7.10(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

7.10(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 193—7.31(17A) and 193—7.32(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

7.10(6) Unless otherwise provided by law, board members, when reviewing a proposed decision of a panel of the board or an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193—7.11(17A) Time requirements.

7.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.11(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.

193—7.12(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 board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193—7.13(17A,272C) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.14(17A) Disqualification.

7.14(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, director 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.

7.14(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 board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker 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 subrule 7.28(9).

7.14(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.

7.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

7.14(5) 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.

7.14(6) A motion to disqualify a board member or other person shall first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person shall withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer shall promptly review that determination, provided that, if the person at issue is an administrative law judge, the review shall be by the board. If the presiding officer determines that disqualification is appropriate, the board member 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 193—7.31(17A), if applicable, and seek a stay under rule 193—7.34(17A).

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.15(17A) Consolidation—severance.

7.15(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.

7.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193—7.16(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193—7.17(17A) Service and filing of pleadings and other papers.

7.17(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 prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, 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. A notice of hearing and statement of charges shall be served by the board as provided in subrule 7.6(2). Once a specific administrative law judge has been assigned to a case, copies of all prehearing motions shall also be served on the administrative law judge.

7.17(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.

7.17(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. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

7.17(4) Filing—how and when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the e-mail address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

7.17(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service nonmetered 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 (insert board title) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

7.17(6) *Electronic service.* The presiding officer may by order or a party or a party's attorney may by consent permit service of particular documents by e-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order or consent, electronic transmission shall not satisfy service requirements, but may be used to supplement service when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the board and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.18(17A) Discovery.

7.18(1) The scope of discovery described in Iowa **Rule of Civil Procedure 1.503** shall apply to contested case proceedings.

7.18(2) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa **Rule of Civil Procedure 1.509** shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa **Rule of Civil Procedure 1.512** shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa **Rule of Civil Procedure 1.510** shall apply to any requests for admission in a contested case proceeding. Iowa **Rule of Civil Procedure 1.511** regarding the effect of an admission shall apply in a contested case proceeding.

7.18(3) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule **193—7.22(17A)**.

7.18(4) Iowa **Rule of Civil Procedure 1.508** shall apply to discovery of any experts identified by a party to a contested case proceeding.

7.18(5) Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the board.

7.18(6) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. 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 lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

7.18(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.19(17A,272C) Issuance of subpoenas in a contested case.

7.19(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a.* The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b.* Adequate safeguards have been established to prevent unauthorized disclosure;
- c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

7.19(2) A request for a subpoena shall include the following information, as applicable:

- a.* The name, address, e-mail address, and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time and location for production, or inspection and copying; and
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 7.19(1) have been satisfied.

7.19(3) Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the executive officer or designee;
- j.* The date of issuance;
- k.* A return of service.

7.19(4) The executive officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

7.19(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

7.19(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

7.19(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193—7.31(17A) and 193—7.32(17A), provided that all of the time frames are reduced by one-half.

7.19(8) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.20(17A) Motions.

7.20(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.

7.20(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 board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

7.20(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 193—7.31(17A).

7.20(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least seven 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 board or an order of the presiding officer.

7.20(5) Motions for summary judgment shall comply with the requirements of Iowa **Rule of Civil Procedure 1.981** and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

7.20(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 193—7.33(17A) and appeal pursuant to rule 193—7.32(17A).

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.21(17A,272C) Prehearing conference and disclosures.

7.21(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 ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

7.21(2) Each party shall disclose at or prior to the prehearing conference:

a. A final list of the witnesses who 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.

7.21(3) In addition to the requirements of subrule 7.21(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.

7.21(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. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference shall be conducted by an administrative law judge.

7.21(5) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 7.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.22(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

7.22(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

7.22(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

7.22(3) The board's executive officer or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive officer or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

193—7.23(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

193—7.24(17A) Intervention.

7.24(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.24(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

7.24(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

7.24(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193—7.25(17A,272C) Hearings. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

7.25(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

7.25(2) Public hearing. The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

7.25(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

7.25(4) Order of proceedings. Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. The presentation of evidence on behalf of the respondent(s).

f. Rebuttal evidence on behalf of the state, if any.

g. Rebuttal evidence on behalf of the respondent(s), if any.

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 193—7.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 193—7.39(546,272C).

7.25(5) Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

7.25(6) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

7.25(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

7.25(8) Witness representation. Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

7.25(9) Depositions. Depositions may be used at hearing to the extent permitted by Iowa **Rule of Civil Procedure 1.704**.

7.25(10) Witness fees. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.26(17A) Evidence.

7.26(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.

7.26(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.26(3) Evidence in the proceeding shall be confined to the issues as 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.

7.26(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 shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

7.26(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and 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.

7.26(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 offer of proof and inserted in the record.

7.26(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.27(17A) Default.

7.27(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.

7.27(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.

7.27(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 board 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 193—7.32(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, which affidavit(s) must be attached to the motion.

7.27(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.

7.27(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.

7.27(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 1.977](#).

7.27(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 193—7.31(17A).

7.27(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

7.27(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

7.27(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 193—7.34(17A).

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.28(17A) Ex parte communication.

7.28(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 board 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 7.14(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.

7.28(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.

7.28(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

7.28(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 193—7.17(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

7.28(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

7.28(6) The executive officer 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 the executive officer or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the executive officer or other persons comply with subrule 7.28(1).

7.28(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties 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 193—7.22(17A).

7.28(8) Disclosure of prohibited communications. A presiding officer who receives 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.

7.28(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, 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.

7.28(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 board. Violation of ex parte communication prohibitions by board personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193—7.29(17A) Recording costs. Upon request, the board shall provide a copy of the whole record 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.

193—7.30(17A,272C) Final decisions, publication and client notification.

7.30(1) Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive officer. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

7.30(2) Publication of decisions. Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published in the professional licensing and regulation bureau's newsletter, may be published on the bureau's Web site, and may be transmitted to the appropriate professional association(s), national associations, other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

7.30(3) Notification of clients. Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193—7.32(17A) Appeals and review.

7.32(1) Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions must be issued by

the board. A proposed disciplinary decision issued by a panel of the board must be acted upon by the full board in order to become a final decision. In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

7.32(2) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

7.32(3) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

7.32(4) *Notice of appeal.* An appeal of a proposed decision 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 which is being appealed;
- 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.

7.32(5) *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 14 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.

7.32(6) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

7.32(7) *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 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.

7.32(8) *Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.33(17A) Applications for rehearing.

7.33(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

7.33(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 board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.33(3), the applicant requests an opportunity to submit additional evidence.

7.33(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

7.33(4) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for

rehearing is deemed filed on the date it is received by the board unless the provisions of subrule 7.17(4) apply.

7.33(5) 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 of the application on all parties.

7.33(6) Disposition. An application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

7.33(7) Proceedings. If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

193—7.34(17A) Stays of board actions.

7.34(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

7.34(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

7.34(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.35(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. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193—7.36(17A) Emergency adjudicative proceedings.

7.36(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license 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.

7.36(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. 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:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or
- (5) Electronic service. Fax or e-mail notification 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 or e-mail and has provided a fax number or e-mail address for that purpose.

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

7.36(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.

7.36(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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.

193—7.37(17A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

7.37(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

7.37(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 7.33(6).

193—7.38(17A,272C) Reinstatement.

7.38(1) The term "reinstatement" as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

a. First, the board must determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in **subrule 7.38(5)**.

b. Second, if the board grants the application to reinstate, the licensee must complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the

license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

7.38(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

7.38(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

7.38(4) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

7.38(5) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 7.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

7.38(6) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than a majority of the board. This order will be published as provided for in subrule 7.30(2).

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—7.39(546,272C) Hearing on license denial. If the board denies an application for an initial, reciprocal or comity license, the executive officer shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 193—7.40(546,272C) shall apply.

7.39(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

7.39(2) The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 193—7.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 193—7.32(17A).

7.39(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

7.39(4) The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

7.39(5) The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

7.39(6) Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

193—7.40(546,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

7.40(1) Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 7.39(2) and 7.39(4) to 7.39(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

7.40(2) Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

7.40(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a.* Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;
- c.* Fully completed; and
- d.* Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

7.40(4) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

193—7.41(546,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the professional licensing and regulation bureau of the banking division of the department of commerce pursuant to rule 193—2.1(272C).

7.41(1) The board may assess the following costs under this rule:

- a.* For conducting a disciplinary hearing, an amount not to exceed \$75.
- b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal to the full board from a proposed panel decision, the appealing party shall timely request and pay for the transcript necessary for use in

the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be governed by Iowa Code section 625.2. 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 any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.

d. All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

7.41(2) When imposed in the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

7.41(3) Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within 10 days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

7.41(4) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

7.41(5) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section 272C.3(2) "a." However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

193—7.42(546,272C) Settlement after notice of hearing.

7.42(1) Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board's executive officer, or the board chair or chair's designee.

7.42(2) The board chair or chair's designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to particular terms of settlement.

7.42(3) The respondent is not obligated to participate in settlement negotiations. The respondent's initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 193—7.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair's designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

7.42(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

7.42(5) If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193—7.30(17A,272C).

193—7.43(252J) Suspension or revocation of a license upon receipt of certificate of noncompliance—child support. Rescinded **ARC 2754C**, IAB 10/12/16, effective 11/16/16.

193—7.44(261) Suspension or revocation of license upon receipt of a certificate of noncompliance—student loan. Rescinded **ARC 2754C**, IAB 10/12/16, effective 11/16/16.

193—7.45(272D) Suspension or revocation of a license upon receipt of certificate of noncompliance—state debt. Rescinded **ARC 2754C**, IAB 10/12/16, effective 11/16/16.

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, 272D, 542, 542B, 543B, 543D, 544A, 544B, and 544C and Iowa Code sections 261.126, 261.127 and 546.10.

[Filed 4/25/01, Notice 3/7/01—published 5/16/01, effective 6/20/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed 9/11/08, Notice 7/30/08—published 10/8/08, effective 11/12/08]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

CHAPTER 8
DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE
FOR NONPAYMENT OF CHILD SUPPORT OR STATE DEBT

193—8.1(252J) Nonpayment of child support. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

8.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

8.1(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

8.1(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the licensee or applicant.

8.1(4) Licensees and applicants 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 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 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

8.1(5) All board fees for applications, license renewal or reinstatement must be paid by licensees or 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 or suspended or revoked a license pursuant to Iowa Code chapter 252J.

8.1(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, 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 or the suspension or revocation of a license, 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.

8.1(7) The board shall notify the licensee or 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 or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—8.2(272C) Prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

[ARC 2754C, IAB 10/12/16, effective 11/16/16; ARC 4828C, IAB 12/18/19, effective 1/22/20]

193—8.3(272D) Nonpayment of state debt. The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

8.3(1) The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with

Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

8.3(2) The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

8.3(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the licensee or applicant.

8.3(4) Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D 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 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

8.3(5) All board fees required for application, license renewal or reinstatement must be paid by licensees or 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 or suspended or revoked a license pursuant to Iowa Code chapter 272D.

8.3(6) In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, 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 or the suspension or revocation of a license, 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.

8.3(7) The board shall notify the licensee or 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 or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

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

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed 9/11/08, Notice 7/30/08—published 10/8/08, effective 11/12/08]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

[Filed ARC 4828C (Notice ARC 4680C, IAB 10/9/19), IAB 12/18/19, effective 1/22/20]

CHAPTER 9
PETITION FOR RULE MAKING

193—9.1(17A) Petition for rule making. Any person, board or other state agency may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter). } PETITION FOR RULE MAKING

The petition must provide the following information:

- 1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names, addresses, and e-mail addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 193—9.4(17A).

9.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, e-mail address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

9.1(2) The board may deny a petition because it does not substantially conform to the required form. [ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—9.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

193—9.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive officer of the board at the board's offices.

193—9.4(17A) Board consideration.

9.4(1) Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

9.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Service of the written notice shall be sent to

the e-mail address provided by the petitioner unless the petitioner specifically requests a mailed copy. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board e-mails or delivers the required notification to petitioner.

9.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

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

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

CHAPTER 10
DECLARATORY ORDERS

193—10.1(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)

Petition by (Name of Petitioner) for
Declaratory Order on (Cite provisions
of law involved).

}

PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
7. The names, addresses, and e-mail addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
8. Any request by petitioner for a meeting provided for by 193—10.7(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, e-mail address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—10.2(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 193—10.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons. Notice may be provided by e-mail or similar electronic means.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—10.3(17A) Intervention.

10.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

10.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

10.3(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)

 Petition by (Name of Original Petitioner)
 for Declaratory Order on (Cite provisions
 of law cited in original petition).

}

 PETITION FOR
 INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names, addresses, and e-mail addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, e-mail address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—10.4(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193—10.5(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive officer of the board at the board's offices.

193—10.6(17A) Service and filing of petitions and other papers.

10.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

10.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

10.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 193—7.17(17A).

193—10.7(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193—10.8(17A) Action on petition.

10.8(1) Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9. Within 30 days after receipt of a petition for a declaratory order, an agency shall, in writing, do one of the following:

- a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;
- b. Set the matter for specified proceedings;
- c. Agree to issue a declaratory order by a specified time; or
- d. Decline to issue a declaratory order, stating the reasons for its action.

10.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193—7.1(17A).

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—10.9(17A) Refusal to issue order. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(5) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.
3. The board does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

10.9(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

10.9(2) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

193—10.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner, intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

193—10.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be e-mailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—10.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order

serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

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

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

CHAPTER 11
SALES AND LEASES OF GOODS AND SERVICES

193—11.1(68B) Selling or leasing of goods or services by members of the department of commerce examining boards. The board members shall not sell or lease, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department of commerce except as authorized by this rule, and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 and the corresponding provisions of rule 351—6.11(68B).

11.1(1) *Conditions of consent for members.* Consent shall be given by a majority of the members of the board upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351 IAC 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351 IAC 6.11(4) and the granting of single consents is impractical or impossible to determine.

11.1(2) *Authorized sales and leases.*

a. A member of a department of commerce examining board may sell or lease goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board on which that official serves. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. Each board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.

b. A member of a department of commerce examining board may sell or lease goods or services to any individual, association, or corporation regulated by the licensing board or commission of which that person is a member if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the licensing board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case, as provided, for instance, in the code of administrative judicial conduct at 481 IAC 10.29(3) "b." Each board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The boards intend that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.

c. Individual application and approval are not required for the sales and leases authorized by this rule and by the consents filed with the ethics and campaign disclosure board unless there are unique facts surrounding a particular sale or lease which would cause the sale or lease to affect the seller's or lessor's duties or functions, would give the buyer or lessee an advantage in dealing with the board, or would otherwise present a conflict of interest as defined in Iowa Code section 68B.2A or common law.

11.1(3) *Application for consent.* Prior to selling or leasing a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent, as provided in 351 IAC 6.11(3), unless the sale or lease is specifically allowed in subrule 11.1(2) and in the consents filed with the ethics and campaign disclosure board. The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale or lease. The application should identify the parties to the sale or lease and the amount of compensation. The application should also explain why the sale or lease should be allowed. All applications must conform to the requirements of 351 IAC 6.11(3).

11.1(4) *Limitation of consent.* Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under

this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules. The board's ruling on each application, whether consent is conferred or denied or conditionally granted, shall be filed with the ethics and campaign disclosure board pursuant to 351 IAC 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351 IAC 6.11(6).

This rule is intended to implement Iowa Code chapter 68B.

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

CHAPTER 12
IMPAIRED LICENSEE REVIEW COMMITTEES

193—12.1(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1) “k,” all boards in the bureau may establish an impaired licensee review committee.

12.1(1) Definitions. The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

“*Committee*” means the impaired licensee review committee.

“*Contract*” means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

“*Impairment*” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

“*Licensee*” means a person licensed under Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C.

“*Self-report*” means the licensee’s providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging the same from a second party.

12.1(2) Purpose. The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments or who are referred to the committee by the board.

12.1(3) Composition of the committee. The chairperson of each board shall appoint the members of the committee for that board. The membership of the committee includes, but is not limited to:

- a. One licensee, registered under the applicable Iowa Code chapter regulated by the board;
- b. One public member of the board;
- c. One or more licensed professionals with expertise in substance abuse/addiction treatment programs or other applicable impairment.

The board may, alternatively, contract with an established impaired licensee review committee of another board, inside or outside the department of commerce, if deemed in the best interest of the licensee or the public.

12.1(4) Eligibility. To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

- a. The licensee must self-report an impairment or suspected impairment directly to the office of the board or be referred to the committee by the board;
- b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances, or illegal substances;
- c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession, although the existence of such an order shall not prevent the board from making a referral when deemed in the best interest of the licensee and the public;
- d. The licensee has not caused harm or injury to a client;
- e. The licensee has not been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of the profession;
- f. The licensee has provided truthful information and fully cooperated with the board or committee.

12.1(5) Meetings. The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

12.1(6) Terms of participation. A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

12.1(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for the purpose of disciplinary action.

12.1(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

12.1(9) *Limitations.* The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action. A violation of a contract is a ground for licensee discipline.

12.1(10) *Confidentiality.* The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

This rule is intended to implement Iowa Code chapter 272C.

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

CHAPTER 13
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

193—13.1(17A,22) Definitions. As used in this chapter:

“*Agency*” in these rules means each board within the Iowa professional licensing and regulation bureau.

“*Confidential record*” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” in these rules means each board within the Iowa professional licensing and regulation bureau.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

193—13.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

193—13.3(17A,22) Requests for access to records.

13.3(1) Location of record. A request for access to a record should be directed to the board which owns or is in physical possession of the record. The request shall be directed to the appropriate board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

13.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

13.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, e-mail, or other electronic means or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, e-mail address, and telephone number of the person requesting the information to facilitate the board’s response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

13.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 193—13.4(17A,22) in this chapter and other applicable provisions of law.

13.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

13.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

13.3(7) Fees.

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. 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.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged to the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 193—13.3(17A,22).

13.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

13.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

13.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified

in that record, and whose address, e-mail address, or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

13.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

13.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

13.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

13.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, e-mail address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

13.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

13.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

13.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a

request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

13.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

193—13.8(17A,22) Disclosures without the consent of the subject.

13.8(1) Open records are routinely disclosed without the consent of the subject.

13.8(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 193—13.9(17A,22) or in the 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.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

h. To other licensing authorities inside and outside Iowa as described in Iowa Code section 272C.6(4).

13.8(3) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 252J or 598.

13.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services, centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapter 252J, sections 261.126 and 261.127 and chapter 272D.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.9(17A,22) Routine use. “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. To the extent allowed by law, the following uses are considered routine uses of all board records:

13.9(1) Disclosure to those officers, employees, and agents of the board 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.

13.9(2) 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.

13.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

13.9(4) 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.

13.9(5) 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.

13.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

13.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

13.9(8) Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

13.9(9) Name and address of licensees, date of licensure, type of license, status of licensure and related information are routinely disclosed to the public upon request.

13.9(10) Name and license numbers of licensees are routinely disclosed to the public upon request.

193—13.10(17A,22) Consensual disclosure of confidential records.

13.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 193—13.7(17A,22).

13.10(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 board 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.

193—13.11(17A,22) Release to subject.

13.11(1) The subject of a confidential record may file a written request to review confidential records about that person. 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. (Iowa Code section 22.7(5))

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding, except those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9).

e. As otherwise authorized by law.

13.11(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.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.12(17A,22) Availability of records.

13.12(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

13.12(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. Personal related information in confidential personnel records of board staff and board members. (Iowa Code section 22.7(11))

b. All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing or those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9). Unlicensed complaint files are open to the public.

c. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.

d. Information relating to the examination results other than final score, except for information about the results of an examination which is given to the person who took the examination. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

- e.* Information relating to the contents of an examination for licensure. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)
- f.* Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))
- g.* Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.
- h.* References for examination or licensure applicants. (Iowa Code section 22.7(18))
- i.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.
- j.* 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.*”
- k.* Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling 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 board. (Iowa Code sections 17A.2 and 17A.3)
- l.* E-mail addresses of licensees when solicited for the purpose of mass communication. An e-mail address may be open to the public when given as part of a specific, individual e-mail correspondence.

13.12(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 193—13.4(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 13.4(3).

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.13(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 193—13.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. Records are stored on paper and in electronic form. The bureau’s records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information may also be placed on the board’s Web site or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

13.13(1) Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing. Only charges and final orders are maintained electronically.

13.13(2) Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7(18) or other provision of law.

13.13(3) The following information regarding licensee disciplinary proceedings:

- a.* Formal charges and notices of hearing.
- b.* Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).
- c.* Final written decisions, including informal stipulations and settlements.

13.13(4) Licensure. Records pertaining to licensure by examination may include:

- a. Transcripts from education programs. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.13, 543B.15, 543D.9, 544A.8, 544B.9, and 544C.5.
- b. Applications for examination. This information is collected pursuant to Iowa Code sections 542.4, 542.8, 542B.13, 543B.20, 543D.7, 544A.8, 544B.9, and 544C.5.
- c. References. These may be requested from applicants pursuant to Iowa Code section 542B.13 or 544A.8.
- d. Past criminal and disciplinary record. This information is collected pursuant to Iowa Code sections 542.5, 542B.13, 543B.15, 543D.12, 544A.27, 544B.9, and 544C.9.
- e. Examination scores. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.14, 543B.20, 543D.8, 544A.8, 544B.9, and 544C.5.
- f. Social security numbers of license applicants and licensees as required by Iowa Code section 252J.8(1).

13.13(5) In addition to the above records, records pertaining to licensure by reciprocity or comity may include:

- a. Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code sections 542.10, 542B.21, 543B.15, 543D.10, 544A.8, 544B.15, and 544C.6.
- b. Verification of licensure by another board. This information is collected pursuant to Iowa Code sections 542.8, 542.19, 542B.20, 543B.21, 543D.11, 544A.8, 544B.10, and 544C.6.
- c. Verification of experience and other licensure qualifications.

13.13(6) Firm and business entity registrations and renewals. This information is collected pursuant to Iowa Code sections 542.7, 542.8, 543B.28, and 544A.21.

13.13(7) Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 543B.28, 543D.16, 544A.10, 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

13.13(8) Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

13.13(9) Trust account records. This information is obtained under the authority of Iowa Code section 543B.46, which may include records such as consents to audit trust accounts, transactional records, bank account and ledger records, examination reports, examiner exit interviews, correspondence and related records.

13.13(10) Errors and omissions insurance records. This information is obtained under the authority of Iowa Code section 543B.47.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.14(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 193—13.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193—13.13(17A,22) may contain information about individuals. Records are paper and electronic and may be stored in automated data processing systems. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

13.14(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may also be found on the board's Web site.

13.14(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). 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 in an automated data processing system, although minutes and other information may be found on the board's Web site.

13.14(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the office of the board. Information concerning examinations and registration is available from the board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system, although some board publications may be found on the board's Web site.

13.14(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 13.12(2), paragraphs "b" and "c." These records may contain information about individuals collected under the authority of Iowa Code sections 542.10, 542B.21, 543B.29, 543D.17, 544A.13, 544B.15, and 544C.9.

13.14(5) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

13.14(6) Other records. All other records that are not exempted from disclosure by law.

13.14(7) Waivers and variances. Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

13.14(8) Declaratory orders.

13.14(9) Rule-making initiatives. All boards maintain both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9.

13.14(10) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may 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.

13.14(11) General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

13.14(12) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

13.14(13) Subdivided land filings and related correspondence collected pursuant to Iowa Code chapter 543C.

13.14(14) Time-share filings and related correspondence collected pursuant to Iowa Code chapter 557A.

13.14(15) All other records that are not confidential by law.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

193—13.15(17A,22) Data processing systems. All data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

193—13.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

193—13.17(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

13.17(1) License and examination applicants. License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by board statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as college transcripts, social security numbers, examination scores, and criminal histories, are confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

13.17(2) Home address. License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The boards within the bureau will honor the “safe at home” address issued by any state’s program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person’s physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its Web site and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

13.17(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by board statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as credit card numbers, may be confidential under state or federal law.

13.17(4) Subdivided land/time-shares. All disclosures and other documents filed with the real estate commission in connection with Iowa Code chapter 543C (subdivided land) or 557A (time-shares) is public information freely available for public examination.

13.17(5) Investigations. Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4), but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

[ARC 2754C, IAB 10/12/16, effective 11/16/16]

These rules are intended to implement Iowa Code chapters 22, 252J and 261.

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed 9/2/08, Notice 5/7/08—published 9/24/08, effective 10/29/08]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

CHAPTER 14
MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE
MEMBERS

193—14.1(272C) Definitions.

“Board” means an examining board or commission within the professional licensing and regulation bureau.

“License” or *“licensure”* means any license, registration, certificate, or permit that may be granted by an examining board or commission within the professional licensing and regulation bureau.

“Military service” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“Military service applicant” means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

“Spouse” means a spouse of an active duty service member of the military forces of the United States.

“Veteran” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2). [ARC 1734C, IAB 11/26/14, effective 12/31/14; ARC 4828C, IAB 12/18/19, effective 1/22/20]

193—14.2(272C) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the board office.

14.2(1) The application may be submitted with an application for licensure or examination or prior to an applicant’s applying for licensure or to take an examination. No fee is required for submission of an application for military service credit.

14.2(2) The applicant shall identify the experience or educational licensure requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

14.2(3) The applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant’s Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

14.2(4) Upon receipt of a completed military service application, the board shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational qualifications for licensure.

14.2(5) The board shall grant the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for licensure.

14.2(6) The board shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

14.2(7) A military service applicant who is aggrieved by the board’s decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board’s decision. The provisions of 193—Chapter 7 shall apply, except that no fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

14.2(8) The board shall grant or deny the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection with the licensure application unless the board grants the military service application. If the board does not grant the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The

withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.

[ARC 1734C, IAB 11/26/14, effective 12/31/14; ARC 4828C, IAB 12/18/19, effective 1/22/20]

193—14.3(272C) Veteran and spouse of active duty service member reciprocity.

14.3(1) A veteran or spouse with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran or spouse must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran or spouse under this subrule shall be given priority and shall be expedited.

14.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2) or spouse of an active duty service member of the military forces of the United States.

14.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the applicant is licensed are substantially equivalent to the licensing requirements in Iowa. The board shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction. As relevant to the license at issue, the board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, postgraduate experience, and examinations required for licensure.

14.3(4) The board shall promptly grant a license to the applicant if the applicant is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or criminal background.

14.3(5) If the board determines that the licensing requirements in the jurisdiction in which the applicant is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the applicant of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If an applicant has not passed the required examination(s) for licensure, the applicant may not be issued a provisional license but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the applicant with the opportunity to satisfy the examination requirements.

b. If additional experience or education is required in order for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional license for a specified period of time during which the applicant will successfully complete the necessary experience or education. The board shall issue a provisional license for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public unless the board determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional license is granted.

c. If a request for a provisional license is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license.

d. If a provisional license is issued, the application for full licensure shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license expires, whichever occurs first. The board may extend a provisional license on a case-by-case basis for good cause.

14.3(6) An applicant who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. The provisions of 193—Chapter 7 shall apply, except that no fees or costs shall be assessed against the applicant in connection with a contested case conducted pursuant to this subrule.

14.3(7) The licensure requirements for some professions regulated by the boards are very similar or identical across jurisdictions. Given federal mandates, for instance, the requirements to become certified as a real estate appraiser authorized to perform appraisals for federally related transactions are substantially the same nationwide. The requirements to become certified as a certified public accountant are also substantially equivalent nationwide as long as the certified public accountant also holds a license or permit to practice in those jurisdictions which have a two-tiered system of issuing a certificate and a separate license or permit to practice public accounting. For other professions, the applicant is encouraged to consult with board staff prior to submitting an application for reciprocal licensure to determine in advance whether there are jurisdictional variations that may impact reciprocal licensure.

[ARC 1734C, IAB 11/26/14, effective 12/31/14; ARC 4828C, IAB 12/18/19, effective 1/22/20]

These rules are intended to implement Iowa Code chapter 272C.

[Filed ARC 1734C (Notice ARC 1630C, IAB 9/17/14), IAB 11/26/14, effective 12/31/14]

[Filed ARC 4828C (Notice ARC 4680C, IAB 10/9/19), IAB 12/18/19, effective 1/22/20]