MEDICINE BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]
[Prior to 7/4/07, see Medical Examiners Board[653]; renamed by 2007 Iowa Acts, Senate File 74]

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CHAPTER 1
ADMINISTRATIVE AND REGULATORY AUTHORITY

[Prior to 5/4/88, see 470—135.1 to 135.10]

653—1.1(17A,147) Definitions. The following definitions shall be applicable to the rules of the board of medicine:

"Acupuncture" shall mean a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Acupuncturist" shall mean a person licensed to practice acupuncture in this state.

"Alternate member" shall mean a person who is qualified under Iowa Code section 148.2A to substitute for a board member who is disqualified or becomes unavailable for any other reason for a contested case hearing. An alternate board member is deemed a member of the board only for the hearing panel(s) for which the alternate board member serves.

"Board" shall mean the board of medicine of the state of Iowa.

"Department" shall mean the Iowa department of public health.

"Director" shall mean the director of the department.

"Disciplinary proceeding" shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

"License" shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under the laws of the state of Iowa.

"Licensee" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under the laws of the state of Iowa.

"Licensee discipline" or *"discipline"* shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional care.

"Malpractice" shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of the physician's profession.

"Medical practice Acts" shall refer to Iowa Code chapters 147 and 148.

"Order" shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

"Peer review" shall mean evaluation of professional services rendered by a professional practitioner.

"Peer reviewer(s)" shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

"Physician" shall mean a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the laws of this state.

"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medical concepts.

"The practice of medicine and surgery" shall mean holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition. This rule shall not apply to licensed podiatrists, chiropractors, physical therapists, nurses, dentists, optometrists, acupuncturists, pharmacists, and other licensed health professionals who are exclusively engaged in the practice of their respective professions.

"Prescription drugs" means drugs, medicine and controlled substances which by law can only be prescribed for human use by persons authorized by law.

"Profession" shall mean medicine and surgery, osteopathic medicine and surgery, or acupuncture.

"Respondent" shall mean a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, or acupuncuture.

"Rule" shall mean a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 148, and 148E.

653—1.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 147, 148, 148E, and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, and acupuncture; the imposition of discipline upon licensees as provided by statute or rule; and the operation of a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability and who self-report or who are referred by the board to the committee.

653—1.3(17A) Organization of board. The board:

1.3(1) Makes policy relative to matters involving medical and acupuncture education, licensure, practice, and discipline.

1.3(2) Conducts business according to board-approved policy.

1.3(3) Elects a chairperson, vice chairperson and a secretary from its membership at the last regular board meeting prior to May 1 or at another date in April scheduled by the board.

1.3(4) A majority of the members of the board shall constitute a quorum. Official action, including filing of formal charges or imposition of discipline, requires a majority vote of members present.

1.3(5) Has the authority to:

a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, and the practice of acupuncture by acupuncturists.

b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, and the practice of acupuncture by licensed acupuncturists.

c. Determine in any case whether an investigation or a disciplinary action is warranted.

d. Initiate and prosecute disciplinary proceedings.

e. Impose licensee discipline.

f. Request that the attorney general file appropriate court action for enforcement of the board's authority relating to licensees or other persons who are charged with violating statutes or rules the board administers or enforces.

g. Establish and register peer reviewers.

h. Refer to one or more registered peer reviewers for investigation, review, and report to the board any complaint or other evidence of an act or omission which the board has reasonable grounds to believe may constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

i. Determine eligibility for license renewal and administer the renewal of licenses.

j. Establish and administer rules for continuing education and mandatory training requirements as a condition of license renewal.

k. Establish fees for examination, fees for the issuance of licenses and fees for other services provided by the board with the intention of producing sufficient revenue to cover the expenses involved with operation of the board and the board office.

l. Establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include:

(1) Executive committee. The membership shall be composed of the elected officers of the board and two at-large members appointed by the chairperson. At least one public member shall be appointed to the executive committee. The executive committee duties may include, but are not limited to:

- Guidance and supervision of the executive director.
- Budgetary review and recommendations to the board.
- Review and recommendations to the board on rules and legislative proposals.
- Study and recommendations to the board on practice issues and policy.

(2) Screening committee. The committee reviews:

- Complaints and makes recommendations to the board on appropriate action including further investigation or referral to the board for closure.

(3) Licensure committee. Its duties may include:

- Recommending appropriate action on completed applications for licensure.
- Conducting interviews with applicants when appropriate.
- Reviewing licensure examination matters.
- Reviewing and recommending to the board appropriate changes in licensure application forms.
- Reviewing and making recommendations to the board regarding volunteer physician applicants who wish to participate in the state-indemnified volunteer physician program and who are under investigation or who have or have had disciplinary action against a license in the present or in the past.
- Making recommendations on licensure policy issues.

(4) Monitoring committee. The committee oversees the monitoring of licensees under board orders and makes recommendations to the board on these matters.

m. Establish the Iowa physician health committee as its licensee review committee.

n. Hire and supervise the executive director.

o. Adopt administrative rules and pursue legislation where necessary to conduct the board's business.

p. Establish a pool of up to ten alternate board members to serve on a hearing panel when a sufficient number of board members is unavailable to hear a contested case.

1.3(6) Appoints a full-time executive director who:

a. Is not a member of the board.

b. Under the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, and the practice of acupuncture; issuance of subpoenas on behalf of the board or a committee of the board during the investigation of possible violations; enunciation of policy on behalf of the board.

1.3(7) Establishes, in accordance with Iowa Code section 148.2A, a pool of alternate board members.

a. At the beginning of each fiscal year, the executive director presents a list of persons who are qualified under Iowa Code section 148.2A to serve as alternate board members for the year beginning September 1.

b. The executive director shall present the board-approved list of alternate board members to the governor for approval.

c. Once the governor approves an alternate board member, the executive director or designee may assign the approved member to hear a contested case when an approved number of board members is unavailable.

653—1.4(17A) Official communications. All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686.

653—1.5(17A) Office hours. The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

653—1.6(17A) Meetings. The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office or on the board's Web site at www.medicalboard.iowa.gov.

Except as otherwise provided by statute, all board meetings shall be open, and the public shall be permitted to attend the meetings.

653—1.7(17A,147) Petition to promulgate, amend or repeal a rule.

1.7(1) An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

1.7(2) The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. The petitioner shall indicate deletions to the current rule with brackets and additions to the current rule with underlining.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

1.7(3) The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA BOARD OF MEDICINE and shall be deemed filed when received by the executive director.

1.7(4) Upon receipt of the petition the executive director shall:

a. Mail within ten days a copy of the petition to any parties named in it. The petition shall be deemed served on the date of mailing to the last-known address of the party being served.

b. Advise petitioner that petitioner has 30 days within which to submit written views.

c. Schedule oral presentation of petitioner's view if the board so directs.

d. Within 60 days after date of submission of the petition, either deny the petition or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

1.7(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

653—1.8(17A) Public hearings prior to the adoption, amendment or repeal of any rule.

1.8(1) *Scheduling a public hearing.* The board may at its discretion hold a public hearing, or it shall hold a public hearing upon the written request of at least 25 interested persons, a governmental subdivision, an agency, or an association of 25 persons.

a. If the board chooses to hold a public hearing, it will announce the date, time, and location in the Iowa Administrative Bulletin.

b. If the board has not scheduled a public hearing and a person or an organization wishes to request one, a written request for a public hearing shall be received by the executive director within 20 days after the notice of intended action has been published.

(1) The executive director shall schedule a public hearing if the request(s) meets the requirements of this rule.

(2) The executive director shall set the date, time, and location of the public hearing.

(3) The individual or organization requesting the public hearing shall be notified of the date, time, and location of the public hearing by certified mail.

1.8(2) *Proceedings at the public hearing.* The chairperson of the board shall serve as the presiding officer or appoint a presiding officer over the public hearing.

a. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled.

(1) Any individual(s) desiring to make written comments in advance of the hearing shall submit these comments to the executive director. The presiding officer shall accept written comments at the hearing.

(2) Any individual(s) desiring to make an oral presentation shall be present at the hearing and ask to speak.

b. The authority of the presiding officer during the public hearing includes:

(1) Setting a time limit on oral presentations if necessary;

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing;

(3) Ruling that the oral presentation or discussion is not pertinent to the hearing; and

(4) Accepting any written testimony.

c. The conduct of the presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive written and oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within 30 days of the date of hearing the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

653—1.9(17A) Declaratory orders.

1.9(1) *Petition for declaratory order.* Any person may file a petition with the board of medicine for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by the board office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board office with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICINE

Petition by (Name of Petitioner) for a 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 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 decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by 1.9(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing 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.

1.9(2) *Notice of petition.* Within 15 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 1.9(6)*"c"* to whom notice is required by any provision of law. The board may also give notice to any other persons.

1.9(3) *Intervention.*

a. 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.

b. 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.

c. A petition for intervention shall be filed with the executive director at the board office. 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:

BOARD OF MEDICINE

Petition by (Name of Original Petitioner) for a 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 and 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, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

1.9(4) *Briefs.* The petitioner or any 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.

1.9(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the board office.

1.9(6) *Service and filing of petitions and other papers.*

a. *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 their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. 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 executive director at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

c. 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 653—25.11(17A).

1.9(7) *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.

1.9(8) *Action on petition.*

a. Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board shall take action on the petition as required by Iowa Code section 17A.9(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 25.11(4).

1.9(9) *Refusal to issue order.*

a. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) 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 a current rule making, contested case, or other agency 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 an agency 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, intervened separately, 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.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. 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 the refusal to issue an order.

1.9(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all 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.

1.9(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

1.9(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound 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 of medicine. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapters 17A, 21, 68B, 148, 148E, 252J, 261, and 272C.

653—1.10(68B) Selling of goods or services by members of the board or Iowa physician health committee (IPHC).

1.10(1) *Application of the rule.* The board members and members of the IPHC shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department except as authorized by this rule.

1.10(2) *Consent.* Consent shall be given by a majority of the members of the board. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department.

d. The selling of the good or service does not result in the official's selling a good or service to the department on behalf of the individual, association, or corporation.

1.10(3) *Authorized sales.* Sales may be authorized under the following conditions:

a. A member of the board or IPHC may sell goods or services to any individual, association, or corporation regulated by any division within the department, other than the board or committee on which that official serves. This consent is granted because the sale of such goods or services does not affect the member's duties or functions on the board or IPHC.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the board 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 of such goods or services does not affect the board or IPHC member's duties or functions on the board or IPHC, respectively. In the event an individual, association, or corporation regulated by the board, to whom a board or IPHC member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board or IPHC member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board or IPHC member to a member of the public, that board or IPHC member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board or IPHC, or would otherwise present a conflict of interest.

1.10(4) *Application for consent.* Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department, an official must obtain prior written consent unless the sale is specifically allowed in subrule 1.10(3). 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. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

1.10(5) *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 chapter 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.

This rule is intended to implement Iowa Code section 68B.4.

[Filed 11/20/51; amended 5/13/64]
[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 3/13/81, Notice 1/7/81—published 4/1/81, effective 5/6/81]
[Filed emergency after Notice 4/28/83, Notice 2/2/83—published 5/25/83, effective 4/28/83]
[Filed 7/15/83, Notice 6/8/83—published 8/3/83, effective 9/7/83]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/25/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 1/10/94, Notice 11/24/93—published 2/2/94, effective 3/9/94]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed 9/29/00, Notice 6/28/00—published 10/18/00, effective 11/22/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 11/5/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]
[Filed 4/27/07, Notice 2/28/07—published 5/23/07, effective 6/27/07]
[Filed 7/24/08, Notice 6/18/08—published 8/13/08, effective 9/17/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of medicine hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

653—2.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "Iowa Board of Medicine".

653—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* In lieu of the words "insert agency head", insert "Iowa Board of Medicine" and in lieu of "insert agency name and address", insert "Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686".

2.3(2) *Office hours.* In lieu of "insert customary office hours and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "the agency's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays".

2.3(7) *Fees.*

c. *Search and supervisory fees.* 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-quarter hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during the examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

653—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "designate office" insert the words "Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686".

653—2.7(17A,22) Consent to disclosure by the subject of a confidential record. Insert at the end of the model rule the following new sentence. "This section does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release."

653—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in subrule 2.10(1) or in any notice for a particular record system.

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

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

submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an 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.

653—2.10(17A,22) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, investigators, members, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, member, or agent, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Disclosure to the attorney general's office for use in performing its official function.

e. Transfers of information within the agency office and among board members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; Federation of State Medical Boards of the United States, Inc., American Medical Association, American Osteopathic Association, Iowa Medical Society, Iowa Osteopathic Medical Association; Educational Commission for Foreign Medical Graduates; Iowa Physician Assistant Society; Physician's Assistant Advisory Committee; approved Advanced Care Training facilities; or to local units of government as appropriate to carry out the agency's statutory authority.

f. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

h. 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.

653—2.11(17A,22) Consensual disclosure of confidential records.

2.11(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 2.7(17A,22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter. 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.

653—2.12(17A,22) Release to subject. The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 653—2.6(17A,22). However, the agency need not release the following records to the subject:

1. 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 sections 22.7(18) and 272C.6(4) or other provision of law.

2. All information in licensee complaint and investigation files maintained by the agency 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.

3. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

4. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

5. As otherwise authorized by law.

653—2.13(17A,22) Availability of records.

2.13(1) Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.70 and 422.72)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. All complaint files, investigative files, other investigation reports, and other investigation information maintained by the agency for purposes of licensee discipline are confidential. (Iowa Code section 272C.6(4))

(1) This 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. (Iowa Code section 272C.6)

(2) The agency may disclose the investigative file, reports and other information to appropriate licensing authorities within this state or the appropriate licensing authorities in another state, territory or country in which the licensee is licensed or has applied for a license. (Iowa Code section 272C.6(4))

(3) If the investigative information in the possession of the agency indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. However, a final written decision and finding of fact in a disciplinary proceeding, including a decision referred to in Iowa Code section 272C.3, subsection 4, is a public record. (Iowa Code section 272C.6(4))

d. Information relating to the contents of an examination for licensure. (Iowa Code section 147.21)

e. Information relating to the results of an examination for licensure 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 section 147.21)

f. Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code chapter 125 and section 228.2 and 42 U.S.C. 290 dd-2)

g. Minutes and tape recordings of portions of meetings held in closed session. (Iowa Code section 21.5(4))

h. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1). (Iowa Code section 21.5(4))

i. 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)*"e."* (Iowa Code sections 21.5(3) and 21.5(18))

j. Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 1.503, Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. Any other information or records made confidential by law.

2.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorized limited or discretionary disclosure as provided in rule 653—2.4(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 2.4(3).

2.13(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit, the department of revenue, and the college student aid commission through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, 261, 272D or 598.

[**ARC 9337B**, IAB 1/12/11, effective 2/16/11]

653—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. The description also indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The records systems maintained by the agency are:

2.14(1) *Records of agency disciplinary hearings.* These records contain information about licensees and certificants who are the subject of an agency disciplinary proceeding or other action. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, 148C, and 272C. This information is stored electronically and on paper. The information contained in "records of closed" board hearings is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 272C.6 or other provisions of the law.

2.14(2) *Information in complaint and investigation files maintained by the agency 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.

2.14(3) *Information on nonlicensee investigation files maintained by the agency.* This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of the law.

2.14(4) *Licensee disciplinary proceedings.* The following information regarding licensee disciplinary proceedings:

a. Formal charges and notices of hearing.

b. Completed 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) or 272C.6.

c. Final written decisions imposing sanctions, including informal stipulations and settlements; or dismissing the charges, in whole or in part.

2.14(5) *Continuing education records.* These records contain educational information about persons licensed or certified by the agency. This information is collected pursuant to the authority granted in Iowa Code chapter 272C. This information is stored on paper only.

2.14(6) *Examination records.* These records contain information about applicants for any of the following examinations: United States Medical Licensing Examination (USMLE), Federation of State Medical Boards of the United States, Inc. - Federation Licensing Examination (FLEX), National Board of Medical Examiners, National Board of Osteopathic Medical Examiners, National Commission for the Certification of Acupuncturists, individual state or territorial medical licensing boards, Licentiate of the Medical Council of Canada examination (LMCC), Special Purpose Examination (SPEX), or other examination approved by the board. These records may also contain information about applicants who pursue licensure by endorsement, score transfer, or other means. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, and 148E and is stored

electronically and on paper. Portions of the examination records are confidential in part pursuant to Iowa Code sections 22.7(1), 22.7(19), and 147.21.

2.14(7) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators and agents. The records include a variety of attachments such as interviews; drug audits; medical records; pharmacy records; exhibits; police reports; and investigators' comments, conclusions, and recommendations. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, and 148C. This information is stored electronically on microfilm and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7, 147.21, and 272C.6(4).

2.14(8) *Licensure and certification records.* These records contain information about doctors of medicine and surgery and osteopathic medicine and surgery; and registered acupuncturists who are licensed or registered by the agency. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, and 148E and is stored on paper, in automated data processing systems, on microfiche, on CD-ROM, floppy disk, and in the state archives. These records may contain information which is confidential under subrule 2.13(2).

2.14(9) *Personnel records.* These records contain personal information about board members, registered peer review committee members, and staff. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. This information is stored on paper and microfiche. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7.

2.14(10) *Routine probation supervision reports.* These reports contain information about licensees or certificants who have been placed on professional probation as the result of an official agency disciplinary action and contain information relating to the licensees' or certificants' compliance with the terms of probation and are confidential under Iowa Code section 272C.6.

2.14(11) *Routine consent agreement monitoring reports.* These reports contain information about licensees or certificants who have been granted licensure or certification under special terms and conditions through official agency action, and contain information relating to the licensees' or certificants' compliance with the terms of the consent agreement and are confidential under Iowa Code section 272C.6.

653—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 653—2.1(17A,22). These records are routinely available to the public. The agency's files of these records may contain confidential information as discussed in rule 653—2.13(17A,22). These records may contain information about individuals. These records include:

2.15(1) *Agency calendars, agenda, news releases, statistical reports and compilations, newsletters, publications, correspondence, and other information intended for the public.* These records may contain information about individuals, including board members and staff. This information is stored on paper only.

2.15(2) *Minutes of open meetings of the agency.* These records contain information about people who participate in board meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored electronically and on paper.

2.15(3) *Records of board rule-making proceedings.* These records may contain information about individuals making written or oral comments on rules proposed by the agency. This information is collected pursuant to Iowa Code section 17A.4. This information is stored electronically and on paper.

2.15(4) *Board decisions, findings of fact, final orders, advisory opinions, and other statements of law, policy, or declaratory rulings issued by the agency in the performance of its function.* These records are open to the public except for information that is confidential according to rule 653—2.13(17A,22). This information is stored on paper and on microfilm.

2.15(5) *Other records.* The agency maintains other records which do not generally contain information pertaining to individuals. These records are routinely open to the public. These records include but are not limited to:

a. Financial reports pertaining to the agency's budget including its revenue and expenses. This information is stored electronically and on paper.

b. Blank forms utilized by the agency and its staff in the performance of its function. This information is stored on paper only.

c. Grant proposals and applications submitted by, on behalf of, or in conjunction with the agency for the purpose of performing the agency's function or furthering its goals and objectives. This information is stored on paper only.

d. A record inventory of all categories of information and records maintained by or on behalf of the board. This inventory is stored on paper only.

653—2.16(17A,22) Data processing system. The agency does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

653—2.17(17A,22) Applicability.

2.17(1) This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records.

2.17(2) This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that 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 rules of another board or agency.
4. Apply to guarantees, including local governments or subdivisions thereof, administering state-funded programs.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative disciplinary 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 constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed 5/4/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 5/3/06, Notice 2/15/06—published 5/24/06, effective 6/28/06]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]
[Filed ARC 9337B (Notice ARC 9089B, IAB 9/22/10), IAB 1/12/11, effective 2/16/11]

CHAPTER 3
WAIVERS AND VARIANCES

653—3.1(17A,147,148) Definition. For purposes of this chapter, a "waiver or variance" means an action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

653—3.2(17A,147,148) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

653—3.3(17A,147,148) Applicability of chapter. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

653—3.4(17A,147,148) Criteria for waiver or variance. In response to a petition completed pursuant to rule 3.6(17A,147,148), the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; 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.

653—3.5(17A,147,148) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

3.5(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.

3.5(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.

3.5(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 director.

3.5(4) *File petition.* A petition is deemed filed when it is received in the board office. A petition should be sent to the Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The petition must conform to the form specified in rule 3.17(17A,147,148).

653—3.6(17A,147,148) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.
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 3.4(17A,147,148). 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 formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the past five years.

6. Any information known to the requester regarding the board's action in similar cases.

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

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

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

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

653—3.7(17A,147,148) 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 director, a committee of the board, or a quorum of the board.

653—3.8(17A,147,148) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that all persons to whom notice is required by any provision of law, including the petitioner, receive notice within 30 days of the receipt of the petition, that the petition is pending and a concise summary of its contents. 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.

653—3.9(17A,147,148) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

653—3.10(17A,147,148) 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.

3.10(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.

3.10(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.

3.10(3) *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

3.10(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.

3.10(5) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

3.10(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.

3.10(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.

3.10(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.

3.10(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.

653—3.11(17A,147,148) 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.

653—3.12(17A,147,148) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. 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.

653—3.13(17A,147,148) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; 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.

653—3.14(17A,147,148) 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.

653—3.15(17A,147,148) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

653—3.16(17A,147,148) 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.

653—3.17(17A,147,148) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE BOARD OF MEDICINE

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter).	PETITION FOR WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also, the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

a. Why applying the rule would result in undue hardship to the petitioner;

b. Why waiving the rule would not prejudice the substantial legal rights of any person;

c. Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and

d. How 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.

5. Provide a history of any prior contacts between the board and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the board's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question, or that might be affected by the grant of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the grant of the waiver or variance.

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

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

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature	Date

These rules are intended to implement Iowa Code chapters 17A, 147, and 148.

[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

CHAPTERS 4 to 7
Reserved

CHAPTER 8
FEES
[Prior to 5/30/01, see 653—Chapter 11]

653—8.1(147,148,272C) Definitions.

"Board" means the Iowa board of medicine.

"Online transaction fee" means a fee of $7 assessed by the board for completing an online purchase. The online transaction fee is in addition to the actual service provided.

[**ARC 3464C**, IAB 11/22/17, effective 12/27/17]

653—8.2(147,148,272C) Application and licensure fees for acupuncturists.

8.2(1) *Licensure provisions for acupuncturists.* For licensure provisions for acupuncturists, see 653—Chapter 17, "Licensure of Acupuncturists."

8.2(2) *Fees for acupuncturists.* The following fees apply to licensure for acupuncturists.

a. Initial application fee for licensure as an acupuncturist, $300.

b. Reactivation of application for licensure, $100.

c. Renewal fee for licensure as an acupuncturist, $300.

d. Upon written request and payment of the designated fee, the board shall provide the following information about the status of an acupuncturist's license or acupuncturist's past registration:

(1) Certified statement that verifies the status of licensure or past registration in Iowa that requires the board seal or a letter of good standing, $25.

(2) Verification of the status of licensure or past registration in Iowa that does not require a certified statement or letter, $20.

e. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, $45.

f. Fee for reinstatement of an acupuncture license, $400.

g. Penalty for failure to renew before expiration, $50.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 3464C**, IAB 11/22/17, effective 12/27/17; **ARC 4246C**, IAB 1/16/19, effective 2/20/19]

653—8.3(147,148,272C) Interstate medical licensure compact (IMLC). Provisions for the interstate medical licensure compact are located in 653—Chapter 9, "Permanent and Administrative Medicine Physician Licensure." The following fees shall apply to the compact.

8.3(1) *Service fee for an application for an IMLC letter of qualification.* The service fee, described in Chapter 3 of the rules of the interstate medical licensure compact commission, is paid directly to the interstate medical licensure compact commission. The interstate commission retains a portion of this service fee and remits a portion of this service fee to the board. The service fee paid to the interstate commission includes the $45 fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

8.3(2) *Licensure fee for an Iowa license issued through the IMLC.* The licensure fee is paid directly to the interstate medical licensure compact commission. An applicant shall pay a licensure fee of $450 plus a service fee retained by the interstate commission.

8.3(3) *Licensure fee for renewal of active Iowa license issued through the IMLC.* The licensure fee is paid directly to the interstate medical licensure compact commission. The licensee shall pay the licensure fee described in 8.4(1)*"c"*(1) plus a service fee retained by the interstate commission. If the license is not renewed prior to expiration, the licensee will incur a penalty as described in 8.4(1)*"d."*

[**ARC 3464C**, IAB 11/22/17, effective 12/27/17]

653—8.4(147,148,272C) Application and licensure fees to practice medicine and surgery or osteopathic medicine and surgery or administrative medicine.

8.4(1) Fees for permanent licensure. For provisions for permanent licensure, see 653—Chapter 9, "Permanent and Administrative Medicine Physician Licensure." The following fees shall apply to permanent licensure.

a. Initial licensure, $450 plus the $45 fee for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

b. Reactivation of application for licensure, $150.

c. Renewal of an active license to practice.

(1) $550 if renewal is made via paper application or $450 if renewal is made via online application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

(2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. "Active duty" means full-time training or active service in the U.S. armed forces, reserves or national guard. A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 8.4(1)*"d."*

d. Penalty for failure to renew before expiration, $100 per calendar month after the expiration date of the license up to $200. For example, if the license expired on January 1, a penalty of $100 shall be charged for January and an additional $100, or a total of $200, shall be charged for renewal in February.

e. There is no fee for placing a license on inactive status or allowing a license to become inactive.

f. Reinstatement of a license to practice one year or more after becoming inactive, $500 plus the $45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

g. Reinstatement of a license within one year of becoming inactive, $550 except when the license in the most recent license period had been granted for less than 24 months. In that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

8.4(2) Fees for resident physician licensure. For provisions for resident physician licensure, see 653—Chapter 10, "Resident, Special and Temporary Physician Licensure." The following fees apply to resident physician licensure.

a. Application for a resident physician license, $100 plus the $45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

b. Extension of a resident physician license, $25.

c. Late fee for extension of a resident physician license, $50, to be paid in addition to the extension fee.

8.4(3) Fees for special physician licensure. For provisions for special physician licensure, see 653—Chapter 10, "Resident, Special and Temporary Physician Licensure." The following fees apply to special physician licensure.

a. Application for a special physician license, $300 plus the $45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

b. Renewal of a special physician license, $200.

8.4(4) Fees for temporary physician licensure. For provisions for temporary physician licensure, see 653—Chapter 10, "Resident, Special and Temporary Physician Licensure." The following fees apply to temporary physician licensure.

a. Application for a temporary physician license, $100 plus the $45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

b. Renewal of a temporary physician license, $50.

8.4(5) Fee for photocopy of a licensure application. Fee for a photocopy of a licensure application is $20.

8.4(6) Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, $45.

[**ARC 0871C**, IAB 7/24/13, effective 8/28/13; **ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 3464C**, IAB 11/22/17, effective 12/27/17]

653—8.5(147,148,272C) Fees for verification of physician licensure and certification of examination scores.

8.5(1) *Verification fees.*

a. Physicians shall use VeriDoc to secure a certified statement that verifies Iowa licensure status for any state medical board that accepts VeriDoc. VeriDoc is accessible at www.veridoc.org. The fee for this service is $30.

b. A physician who needs a certified statement that verifies Iowa licensure status for a state medical board that does not accept verification from VeriDoc shall make a written request for a certified statement with payment of a $30 verification fee to the Iowa Board of Medicine. The Iowa board shall provide a certified statement that verifies Iowa licensure status to the nonaccepting state medical board.

c. The fee for verification of Iowa licensure status that does not require a certified statement or letter is $15.

d. The board shall provide an automated telephone or electronic verification service whereby users can input the licensee's license number to learn the licensee's current licensure status. There is no fee for this service.

The board shall provide a license number for an individual caller to use in the automated telephone or electronic verification service. Businesses that utilize verifications will be required to utilize the automated telephone or electronic verification service or the alternative outlined in 8.5(1)*"c."*

8.5(2) *Fees for certification of physician examination scores.* Upon request and payment of the designated fee, the board may provide certification of scores of an examination given by the board in Iowa as permitted under Iowa Code section 147.21 and 653—paragraph 2.13(2)*"f."* The scores available from the board are those from examinees who took the state-constructed examination.

a. Certified statement of grades attained by examination, $45.

b. Certified statement of grades attained by examination including examination history or additional documentation, $55.

[**ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 3464C**, IAB 11/22/17, effective 12/27/17]

653—8.6(147,148,272C) Public records.

8.6(1) *Public records available at no cost.* The following records are available at no cost to the public:

a. Public action taken by the board against a licensee may be found under the licensee's name on the board's website, www.medicalboard.iowa.gov, under "Find A Physician." Public actions are posted on the board's website within approximately one week after the board has taken action.

b. Electronic files of press releases, statements of charges, final orders and consent agreements from each board meeting are available within approximately one week after the board has taken action. These files are available on the board's website, www.medicalboard.iowa.gov.

8.6(2) *Purchase of public records.* Public records are available according to 653—Chapter 2, "Public Records and Fair Information Practices." Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of the records.

a. Printed copies of public records shall be calculated at $.25 per page plus labor. The board may charge a $16 per hour fee for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically. No additional fee shall be charged for delivery of the records by mail, fax, or email. Fax is an option if the requested records are fewer than 30 pages. The board office shall not require payment when the fees for the request would be less than $5 total.

b. Electronic copies of public records delivered by email shall be provided at no charge per page. The board may charge a $16 per hour fee for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically.

[**ARC 1187C**, IAB 11/27/13, effective 1/1/14]

653—8.7(147,148,272C) Licensee data list. A data list of all physicians and acupuncturists includes the following information about each licensee: full name, year of birth, work address and telephone number (or other contact information on file if licensee's work address and telephone number are not available), Iowa county (if applicable), medical school (if applicable), year of graduation from medical school (if applicable), two medical specialties (if available), license issue date, license expiration date, license number, license type, license status, and an indicator of whether the board has taken any public action on the license. There is no fee for an electronic file of this list. A printed copy of the data list is

available at the board's office at fees described in rule 653—8.6(147,148,272C). Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of a printed copy of the list.
[**ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 3464C**, IAB 11/22/17, effective 12/27/17]

653—8.8(147,148,272C) Returned checks. The board shall charge a fee of $25 for a check returned for any reason. If a license had been issued by the board office based on a check that is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification of the returned check by certified mail, the licensee shall be subject to disciplinary action for noncompliance with board rules.

653—8.9(147,148,272C) Copies of the laws and rules. Electronic copies of laws and rules pertaining to the practice of medicine or acupuncture are available at www.legis.iowa.gov at no cost. Printed copies of these laws and rules are available at the board's office at fees described in rule 653—8.6(147,148,272C).
[**ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 3464C**, IAB 11/22/17, effective 12/27/17]

653—8.10(147,148,272C) Refunds. Application and licensure fees shall be collected by the board and shall not be refunded except by board action in unusual instances, e.g., documented illness or death of the applicant. The board shall consider the cost of the work completed on the application and the cost of the work to grant a refund in determining the amount of refund to be granted.

653—8.11(17A,147,148,272C) Waiver or variance prohibited. Licensure and examination fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

653—8.12(8,147,148,272C) Request for reports. The board may request a report from the National Practitioner Data Bank regarding an applicant or licensee. The cost of obtaining the report is included within the fee for initial licensure or licensure reinstatement or renewal.
[**ARC 1187C**, IAB 11/27/13, effective 1/1/14]

653—8.13(8,147,148,272C) Monitoring fee. The board may require payment of up to $300 per quarter to cover the board's expenses to monitor a licensee's compliance with a settlement agreement or final decision and order.
[**ARC 1187C**, IAB 11/27/13, effective 1/1/14]

653—8.14(147,148,272C) Application and licensure fees for genetic counselors.

8.14(1) *Licensure provisions for genetic counselors.* Licensure provisions for genetic counselors can be found at 653—Chapter 20, "Licensure of Genetic Counselors."

8.14(2) *Fees for genetic counselors.* The following fees apply to licensure and provisional licensure for genetic counselors.

a. Initial application fee for licensure, $200.

b. Reactivation of application for licensure, $100.

c. Renewal of an active license, $200.

d. Penalty for failure to renew before expiration, $50.

e. Upon written request and payment of the designated fee, the board shall provide the following information about the status of a genetic counselor's license:

(1) Certified statement that verifies the status of licensure in Iowa that requires the board seal or a letter of good standing, $25.

(2) Verification of the status of licensure in Iowa that does not require a certified statement or letter, $20.

f. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, $45.

g. Fee for reinstatement of a license, $300.

[**ARC 4246C**, IAB 1/16/19, effective 2/20/19]

These rules are intended to implement Iowa Code sections 147.11, 147.80, 148.3, 148.5, 148.10, and 148.11.

[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed emergency 4/12/02—published 5/1/02, effective 4/12/02]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 6/5/02]
[Filed 6/6/02, Notice 5/1/02—published 6/26/02, effective 7/31/02]
[Filed emergency 10/9/02 after Notice 8/21/02—published 10/30/02, effective 10/9/02]
[Filed 1/3/03, Notice 11/27/02—published 1/22/03, effective 2/26/03]
[Filed emergency 2/7/03 after Notice 1/8/03—published 3/5/03, effective 2/7/03]
[Filed emergency 8/28/03 after Notice 4/30/03—published 9/17/03, effective 9/1/03]
[Filed emergency 8/28/03 after Notice 7/23/03—published 9/17/03, effective 9/1/03]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 9/9/04, Notice 8/4/04—published 9/29/04, effective 11/3/04]
[Filed emergency 8/30/05 after Notice 7/6/05—published 9/28/05, effective 10/1/05]
[Filed 10/12/06, Notice 8/2/06—published 11/8/06, effective 1/1/07]
[Filed emergency 2/8/07 after Notice 1/3/07—published 2/28/07, effective 3/1/07]
[Filed emergency 11/21/07 after Notice 10/10/07—published 12/19/07, effective 1/1/08]
[Filed 7/24/08, Notice 6/18/08—published 8/13/08, effective 9/17/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]
[Filed ARC 8707B (Notice ARC 8524B, IAB 2/10/10), IAB 5/5/10, effective 6/9/10]
[Filed ARC 0871C (Notice ARC 0697C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 1187C (Notice ARC 0943C, IAB 8/7/13), IAB 11/27/13, effective 1/1/14]
[Filed ARC 3464C (Notice ARC 3258C, IAB 8/16/17), IAB 11/22/17, effective 12/27/17]
[Filed ARC 4246C (Notice ARC 4094C, IAB 10/24/18), IAB 1/16/19, effective 2/20/19]

CHAPTER 9
PERMANENT AND ADMINISTRATIVE MEDICINE PHYSICIAN LICENSURE

[Prior to 5/30/01, see 653—Chapter 11]

653—9.1(147,148) Definitions.

"ABMS" means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

"ACGME" means the Accreditation Council for Graduate Medical Education, an accreditation body that is responsible for accreditation of post-medical school training programs in medicine and surgery in the United States of America. The board approves resident training programs accredited by ACGME.

"Administrative medicine" means administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician and capable of affecting the health and safety of the public or any person. A physician with an administrative medicine license may advise organizations, both public and private, on health care matters; authorize and deny financial payments for care; organize and direct research programs; review care provided for quality; and perform other similar duties that do not require direct patient care. "Administrative medicine" does not include the authority to practice clinical medicine; examine, care for or treat patients; prescribe medications, including controlled substances; or delegate medical acts or prescriptive authority to others.

"Administrative medicine license" means a license issued by the board pursuant to 653—9.20(147,148).

"AMA" means the American Medical Association, a professional organization of physicians and surgeons.

"Any jurisdiction" means any state, the District of Columbia or territory of the United States of America or any other nation.

"Any United States jurisdiction" means any state, the District of Columbia or territory of the United States of America.

"AOA" means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

"Applicant" means a person who seeks authorization to practice medicine and surgery, osteopathic medicine and surgery, or administrative medicine in this state by making application to the board, or a physician who seeks licensure through the IMLC.

"Approved abuse education training program" means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

"Board" means Iowa board of medicine.

"Board-approved resident training program" means a hospital-affiliated graduate medical education program accredited by ACGME, AOA, RCPSC, or CFPC at the time the applicant is enrolled in the program.

"Candidate" means a person who applies to sit for an examination administered by the board or its designated testing service.

"Category 1 credit" means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and

is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

"CFPC" means the College of Family Physicians of Canada, an organization that accredits graduate medical education in family practice in Canada.

"COCA" means the Commission on Osteopathic College Accreditation.

"COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination that is recognized by the board as the licensure examination that replaced the NBOME examination for graduates of osteopathic medical schools or colleges.

"Committee" means the licensure committee of the board.

"COMVEX-USA" means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America. The National Board of Osteopathic Medical Examiners prepares the examination and determines its passing score. A licensing authority in any jurisdiction administers the examination. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

"Conviction" for the purposes of licensure through the IMLC means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of conviction of a criminal offense by the court shall be considered final for the purposes of disciplinary action by a member board of the IMLC.

"Core credentials" means those documents that demonstrate the applicant's identity, medical training and practice history. "Core credentials" includes but is not limited to: medical school verification, medical school diploma, examination history, current ECFMG status report, fifth pathway certificate, and postgraduate training verification.

"Criminal offense" for the purposes of licensure through the IMLC means a felony, gross misdemeanor, or crime of moral turpitude.

"Current, active status" means a license that is in effect and grants the privilege of practicing administrative medicine, medicine and surgery or osteopathic medicine and surgery, as applicable.

"ECFMG" means the Educational Commission for Foreign Medical Graduates, an organization that assesses the readiness of foreign medical school graduates to enter ACGME-approved graduate medical education programs in the United States.

"Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the IMLC.

"FCVS" means the Federation Credentials Verification Service, a service under the Federation of State Medical Boards that verifies and stores core credentials for retrieval whenever needed.

"FLEX" means the Federation Licensing Examination, a licensure examination used in the past that was approved by the board for graduates with a medical degree.

"Foreign medical school," also known as an "international medical school," means a medical school that is located outside of any United States jurisdiction or Canada.

"FSMB" means the Federation of State Medical Boards, the organization of medical boards of the United States of America.

"IMLC" means the Interstate Medical Licensure Compact enacted in Iowa Code chapter 147B.

"Inactive license" means any license that is not in current, active status. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice under an inactive Iowa license until the inactive license is reinstated to active status.

"Incidentally called into this state in consultation with a physician and surgeon licensed in this state" as set forth in Iowa Code section 148.2(5) means all of the following shall be true:

1. The consulting physician shall be involved in the care of patients in Iowa only at the request of an Iowa-licensed physician.

2. The consulting physician has a license in good standing in another United States jurisdiction.

3. The consulting physician provides expertise and acts in an advisory capacity to an Iowa-licensed physician. The consulting physician may examine the patient and advise an Iowa-licensed physician as

to the care that should be provided, but the consulting physician may not personally perform procedures, write orders, or prescribe for the patient.

4. The consulting physician practices in Iowa for a period not greater than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day.

5. The Iowa-licensed physician requesting the consultation retains the primary responsibility for the management of the patient's care.

"Initial license" means the first permanent or administrative medicine license granted to a qualified individual.

"International medical school," also known as a "foreign medical school," means a medical school that is located outside of any United States jurisdiction or Canada.

"Interstate commission" means the interstate commission created pursuant to Iowa Code chapter 147B.

"LCME" means Liaison Committee on Medical Education, an organization that accredits educational institutions granting degrees in medicine and surgery. The board approves programs that are accredited by LCME.

"LMCC" means enrollment in the Canadian Medical Register as Licentiate of Medical Council of Canada with a certificate of registration as proof. LMCC requires passing both parts of the Medical Council of Canada Qualifying Examination.

"MCCEE" means the Medical Council of Canada Evaluating Examination, an examination administered in Canada to physicians who graduated from a medical school outside of the United States or Canada.

"Medical degree" means a degree of doctor of medicine and surgery or osteopathic medicine and surgery or comparable education from a foreign medical school.

"National Practitioner Data Bank" is a national data bank of disciplinary actions taken against health professionals, including physicians.

"NBME" means the National Board of Medical Examiners, an organization that prepares and administers qualifying examinations, either independently or jointly with other organizations.

"NBOME" means the National Board of Osteopathic Medical Examiners, an organization that prepares and administers qualifying examinations for osteopathic physicians.

"Observer" means a person who is not enrolled in an LCME- or COCA-accredited medical school or osteopathic medical school, who observes care to patients in Iowa for a defined period of time and for a noncredit experience, and who is supervised and accompanied by an Iowa-licensed physician as defined in 9.2(3). An observer shall not provide or direct hands-on patient care, regardless of the observer's level of training or supervision. The supervising physician may authorize an observer to read a chart, observe a patient interview or examination, or witness procedures, including surgery. An observer shall not chart; touch a patient as part of an examination; conduct an interview; order, prescribe or administer medications; make decisions that affect patient care; direct others in providing patient care; or conduct procedures, including surgery. Any of these activities requires licensure to practice in Iowa. An unlicensed physician observer or a medical student observer who is not enrolled in an LCME- or COCA-accredited medical school may touch a patient to verify a physical finding in the immediate presence of a physician but shall not conduct a more inclusive physical examination.

An unlicensed physician observer may:

1. Participate in discussions regarding the care of individual patients, including offering suggestions about diagnosis or treatment, provided the unlicensed physician observer does not direct the care; and

2. Elicit information from a patient provided the unlicensed physician observer does not actually perform a physical examination or otherwise touch the patient.

"Permanent licensure" means licensure granted after review of the application and core credentials to determine that the individual is qualified to enter into clinical practice. The individual may only practice when the license is in current, active status.

"Practice" means the practice of medicine and surgery or osteopathic medicine and surgery.

"Primary source verification" means:

1. Verification of the authenticity of documents with the original source that issued the document.
2. Original source verification by another jurisdiction's physician licensing organization.
3. Original source verification by the FSMB's Federation Credentials Verification Service.

"RCPSC" means the Royal College of Physicians and Surgeons of Canada, an organization that accredits graduate medical education in Canada.

"Reinstatement" means the process for returning an inactive license to current, active status.

"Relinquishment" means that a person's permanent license to practice medicine and surgery, osteopathic medicine and surgery, or administrative medicine is deemed abandoned if the person fails to renew or reinstate the license within five years after its expiration. A license that has been relinquished is no longer valid or renewable. Relinquishment is not disciplinary in nature.

"Resident physician" means a physician enrolled in an internship, residency or fellowship.

"Resident training program" means a hospital-affiliated graduate medical education program that enrolls interns, residents or fellows and may be referred to as a postgraduate training program for purposes of licensure.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

"SPEX" means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction. The passing score on SPEX is 75.

"Terminated license" means a a nondisciplinary process by which an Iowa license issued through the Interstate Medical Licensure Compact is no longer eligible for renewal. A compact license is terminated when a licensee no longer meets the IMLC qualifications. A terminated IMLC license may not be reinstated.

"Training for chronic pain management" means required training on chronic pain management identified in 653—Chapter 11.

"Training for end-of-life care" means required training on end-of-life care identified in 653—Chapter 11.

"Training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively, as specified in 653—Chapter 11. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

"Uniform application for physician state licensure" means a Web-based application that is intended to standardize and simplify the licensure application process for state medical licensure. The Federation of State Medical Boards created and maintains the application. This application is used for all license types issued by the Iowa board of medicine.

"USMLE" means the United States Medical Licensing Examination.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 2346C**, IAB 1/6/16, effective 2/10/16; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.2(147,148) General licensure provisions.

9.2(1) *Licensure required.* Licensure is required for practice in Iowa as identified in Iowa Code section 148.1; the exceptions are identified in subrule 9.2(2). Provisions for permanent physician licensure, licensure through the IMLC, and administrative medicine licensure are found in this chapter; provisions for resident, special and temporary physician licensure are found in 653—Chapter 10.

9.2(2) *Licensure not required.* The following persons are not required to obtain a license to practice in Iowa:

a. Those persons described in Iowa Code sections 148.2(1) to 148.2(5).

(1) A medical student or osteopathic medical student in an international medical school may not take on the role of a medical student in the patient care setting unless the student is enrolled in the University of Iowa's Carver College of Medicine or in Des Moines University's College of Osteopathic

Medicine; however, an international medical student not enrolled at either of these institutions may be an observer as defined in rule 653—9.1(147,148).

(2) A graduate of an international medical school shall not practice medicine without an Iowa medical license; however, the graduate may be an observer as defined in rule 653—9.1(147,148).

b. Those persons who are incidentally called into this state in consultation with a physician or surgeon licensed in this state as described in Iowa Code section 148.2(5) and as defined in rule 653—9.1(147,148).

c. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come into Iowa on a temporary basis to aid disaster victims at the time of a disaster in accordance with Iowa Code section 29C.6.

d. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come to Iowa to participate in further medical education may participate in patient care under the request and supervision of the patient's Iowa-licensed physician in charge of the education. The Iowa-licensed physician shall retain the primary responsibility for management of the patient's care.

e. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come into Iowa to serve as expert witnesses as long as they do not provide treatment.

f. Physicians and surgeons from out of state who hold a current, active license in good standing in another United States jurisdiction and who accompany one or more individuals into Iowa for the purpose of providing medical care to these individuals on a short-term basis, e.g., a team physician for an out-of-state college football team that comes into Iowa for a game.

g. Physicians and surgeons who come to Iowa to observe patient care and who do not provide or direct hands-on patient care.

h. Visiting resident physicians who come to Iowa to practice as part of their resident training program if under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary license is required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148)).

9.2(3) *Supervision of an observer.* An Iowa-licensed physician who supervises an observer shall accompany the observer and solicit consent from each patient, where feasible, for the observation. The physician shall inform the patient of the observer's background, e.g., high school student considering a medical career, a medical graduate who is working on licensure. The supervising physician shall ensure that the observer remains within the scope of an observer as defined in rule 653—9.1(147,148).

[**ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.3(147,148) Eligibility for licensure.

9.3(1) *Requirements.* To be eligible for permanent or administrative medicine licensure, an applicant shall meet all of the following requirements:

a. Fulfill the application requirements specified in rule 653—9.4(147,148).

b. Hold a medical degree from an educational institution approved by the board at the time the applicant graduated and was awarded the degree.

(1) Educational institutions approved by the board shall be fully accredited by an accrediting agency recognized by the board as schools of instruction in medicine and surgery or osteopathic medicine and surgery and empowered to grant academic degrees in medicine.

(2) The accrediting bodies currently recognized by the board are:

1. LCME for the educational institutions granting degrees in medicine and surgery; and

2. AOA for educational institutions granting degrees in osteopathic medicine and surgery.

(3) If the applicant holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the applicant shall meet one of the following requirements:

1. Hold a valid certificate issued by ECFMG;
2. Pass the MCCEE;
3. Have successfully completed a fifth pathway program established in accordance with AMA criteria;
4. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and have successfully completed three years of resident training in a program approved by the board; and have submitted evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction; or
5. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and hold board certification by a specialty board approved by ABMS or AOA; and submit evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction.

c. Have successfully completed one year of resident training in a hospital-affiliated program approved by the board at the time the applicant was enrolled in the program. An applicant who is a graduate of an international medical school shall have successfully completed 24 months of such training.

(1) For those required to have 12 months of training, the program shall have been 12 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board. For those required to have 24 months of training, the program shall have been 24 continuous months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board.

(2) Resident training approved by the board shall be accredited by an accrediting agency recognized by the board for the purpose of accrediting resident training programs.

(3) The board approves resident training programs accredited by:

1. ACGME;
2. AOA;
3. RCPSC; and
4. CFPC.

(4) The board shall accept each 12 months of practice as a special licensee as equivalent to one year of resident training in a hospital-affiliated program approved by the board.

(5) The board may accept a current, active ABMS or AOA board certification obtained through an alternate pathway as equivalent to resident training in a hospital-affiliated program approved by the board. The alternate pathway must be a minimum of 24 months completed at an institution with a program approved by the board as specified in subparagraph 9.3(1)*"c"*(3).

d. Pass one of the licensure examinations or combinations as prescribed in rule 653—9.7(147,148).

9.3(2) *Exceptions to the eligibility requirements.*

a. A military service applicant or a veteran may apply for credit for verified military education, training, or service toward any experience or educational requirement for permanent licensure under this subrule or may be eligible for permanent licensure through reciprocity as specified in 653—Chapter 18.

b. A physician who holds a valid Letter of Qualification asserting eligibility for licensure through the IMLC is eligible for a permanent Iowa medical license.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.4(147,148) Licensure application.

9.4(1) *Requirements.* To apply for licensure, an applicant shall:

a. Pay a nonrefundable initial application fee and fee for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) as specified in 653—paragraph 8.4(1)*"a"*; and

b. Complete and submit forms provided by the board, including required core credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth

of all information provided by the applicant, which has been signed by the applicant in the physical presence (in the same room) of a notary public.

c. Pass one of the examinations as prescribed in rule 653—9.7(147,148) and authorize the testing authority to verify scores.

9.4(2) *Application.* The application shall require the following information:

a. Full legal name, date and place of birth, home address, mailing address, principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board.

b. A photograph of the applicant suitable for positive identification.

c. A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

d. A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.

e. A certified statement of scores on any licensure examination required in rule 653—9.7(147,148) that the applicant has taken in any jurisdiction. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

f. A photocopy of the applicant's medical degree issued by an educational institution.

(1) A complete translation of any diploma not written in English shall be submitted. An official transcript, written in English and received directly from the school, showing graduation from medical school is a suitable alternative.

(2) An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

(3) If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

g. A sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

h. An official transcript, or its equivalent, received directly from the school for every medical school attended if requested by the board. A complete translation of any transcript not written in English shall be submitted if requested by the board. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

i. If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a current ECFMG status report or evidence of successful completion of a fifth pathway program in accordance with criteria established by AMA. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

j. Documentation of successful completion of resident training approved by the board as specified in paragraph 9.3(1)*"c."* An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

k. Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

l. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

m. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care. Copies of evaluations, verification of medical condition from treating physicians, or other documentation may be requested if needed during the review process.

n. A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.

o. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending. Copies of the legal documents may be requested if needed during the review process.

p. A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.5(147,148) Licensure by endorsement. Rescinded **ARC 3587C**, IAB 1/17/18, effective 2/21/18.

653—9.6(147,148) Licensure by expedited endorsement. Rescinded **ARC 3587C**, IAB 1/17/18, effective 2/21/18.

653—9.7(147,148) Licensure examinations.

9.7(1) *USMLE.*

a. The USMLE is a joint program of FSMB and the NBME. The USMLE is a multipart examination consisting of Step 1, Step 2, and Step 3. Steps 1 and 2 are administered by NBME and ECFMG. The board contracts with FSMB for the administration of Step 3. USMLE Steps 1 and 2 were implemented in 1992; Step 3 was implemented in 1994.

b. Since 1999, Step 3 is a computerized examination offered at testing centers in the Des Moines area and other locations around Iowa and the United States.

c. Applications are available at Department of Examination Services, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039, or www.fsmb.org.

d. Candidates who meet the following requirements are eligible to take USMLE Step 3:

(1) Submit a completed application form and pay the required examination fee as specified in rule 653—8.3(147,148,272C).

(2) Document successful completion of USMLE Steps 1 and 2 in accordance with the requirements of NBME. Graduates of a foreign medical school shall meet the requirements of ECFMG.

(3) Document holding a medical degree from a board-approved educational institution. If a candidate holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the candidate shall meet the requirements specified in subparagraph 9.3(1)*"b"*(3).

(4) Document successful completion of a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Step 3 or enrollment in a resident training program approved by the board at the time of the application for Step 3.

e. The following conditions shall apply to applicants for licensure in Iowa who utilize USMLE as the licensure examination.

(1) Passing Steps 1, 2, and 3 is required within a ten-year period beginning with the date of passing either Step 1 or Step 2, whichever occurred first. If the applicant did not pass Steps 1, 2, and 3 within the required time frame, then the requirement will be satisfied by either proof of active board certification by the ABMS or AOA or proof the delay was caused by participation in a joint M.D./Ph.D. or D.O./Ph.D. program.

(2) Step 3 may be taken and passed only after Steps 1 and 2 are passed.

(3) A score of 75 or better on each step shall constitute a passing score on that step.

(4) Each USMLE step must be passed individually, and individual step scores shall not be averaged to compute an overall score.

(5) A failure of any USMLE step, regardless of the jurisdiction for which it was taken, shall be considered a failure of that step for the purposes of Iowa licensure.

(6) Successful completion of a continuous, progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 CK and Step 2 CS combined or three attempts on Step 3.

f. Any candidate deemed eligible to sit for USMLE Step 3 is required to adhere to the examination procedures and protocol established by FSMB and NBME in the following publications: USMLE Test Administration Standards and Policies and Procedures Regarding Indeterminate Scores and Irregular Behavior, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039.

9.7(2) *NBME.*

a. NBME Part Examinations (Parts I, II, and III) were first administered in 1916. The last regular administration of Part I occurred in 1991, Part II in April 1992, and Part III in May 1994.

b. Successful completion of NBME Parts I, II, and III was a requirement for NBME certification.

c. A score of 75 or better on each part shall constitute a passing score on that part.

9.7(3) *FLEX.*

a. From 1968 to 1985, (Old) FLEX was a three-day examination. Day 1 covered basic science; Day 2 covered clinical science; and Day 3 covered clinical competency. Applicants who took Old FLEX shall provide evidence of successful achievement of at least two of the following:

(1) Certification under seal that the applicant passed FLEX with a FLEX-weighted average of 75 percent or better, as determined by the state medical licensing authority, in no more than two sittings.

(2) Verification under seal of medical licensure in the state that administered the examination.

(3) Evidence of current certification by an American specialty board approved or recognized by the Council of Medical Education of AMA, ABMS, or AOA.

b. From 1985 to 1994, (New) FLEX replaced the Old FLEX. New FLEX was a three-day nationally standardized examination consisting of two, one and one-half day components referred to as Component I (basic and clinical science principles and mechanisms underlying disease and modes of therapy) and Component II (knowledge and cognitive abilities required of a physician assuming independent responsibility for the general delivery of medical care to patients). The last regular administration of both components of New FLEX occurred in 1993. Two special administrations of New FLEX Component I were offered in 1994 to examinees who passed Component II but not Component I prior to 1994. To be eligible for licensure, the candidate must have passed both components with a FLEX score of 75 or better within a seven-year period beginning with the date of initial examination.

(1) Candidates who took the FLEX for the first time were required to take both components during the initial sitting. A candidate who failed either or both components must have repeated and passed the component failed, though Component II could only be repeated if the candidate had received a passing score of 75 percent or better on Component I.

(2) Eligible candidates were permitted to sit for the initial examination and reapply to the board to repeat a failed component or complete the entire examination two additional times. However, candidates who failed either or both components three times were required to wait one year, during which time the candidate was encouraged to obtain additional training, before being permitted to sit two additional times for either or both components of the FLEX.

9.7(4) *Combination examination sequences.* To accommodate individuals who had already passed some part of the NBME Parts or FLEX before implementation of the USMLE, the USMLE program recommended and the board approved the following licensing combinations of examinations for licensure only if completed prior to January 1, 2000. These combinations are now only acceptable from an applicant who already holds a license from any United States jurisdiction.

a. FLEX Component I plus USMLE Step 3 with a passing score of 75 or better on each examination;

b. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus FLEX Component II with a passing score of 75 or better on each examination; or

c. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus NBME Part III or USMLE Step 3 with a passing score of 75 or better on each examination.

9.7(5) *COMLEX.* COMLEX is a three-level examination that replaced the three-part NBOME examination. COMLEX Level 3 was first administered in February 1995; Level 2 was first administered in March 1997; and Level 1 was first administered in June 1998. All three examinations must be successfully completed in sequential order within ten years of the successful completion of COMLEX Level 1. If the applicant did not pass Levels 1, 2, and 3 within the required time frame, then the requirement will be satisfied by either proof of active board certification by the ABMS or AOA or proof the delay was caused by participation in a joint D.O./Ph.D. or M.D./Ph.D. program.

a. A standard score of 400 on Level 1 or Level 2 is required to pass the examination. A standard score of 350 on Level 3 is required to pass the examination.

b. A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Level 3 or enrollment in a resident training program approved by the board at the time of the application for Level 3.

c. Successful completion of a continuous, progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Level 1 or six attempts on Level 2 CE and Level 2 PF combined or three attempts on Level 3.

d. Each COMLEX level must be passed individually, and individual level scores shall not be averaged to compute an overall score.

e. Level 3 may be taken and passed only after Levels 1 and 2 are passed.

f. A failure of any COMLEX level, regardless of the jurisdiction for which it was taken, shall be considered a failure of that level for the purposes of Iowa licensure.

9.7(6) *NBOME.*

a. NBOME was a three-part examination. All three parts must have been successfully completed in sequential order within seven years of the successful completion of NBOME Part 1.

b. A passing score is required on each part of the examination.

c. A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for NBOME Part 3. Candidates shall have completed their resident training by the last day of the month in which the examination was taken.

d. Successful completion of a three-year resident training program is required if the applicant passes the examination after more than six attempts on Part 1 or six attempts on Part 2 or three attempts on Part 3.

e. Each NBOME part must have been passed individually, and individual part scores shall not be averaged to compute an overall score.

f. Part 3 must have been taken and passed only after Parts 1 and 2 were passed.

g. A failure of any NBOME part, regardless of the jurisdiction for which it was taken, shall be considered a failure of that part for the purposes of Iowa licensure.

9.7(7) *LMCC.*

a. The board accepts toward Iowa licensure a verification of a licentiate's registration with the Medical Council of Canada, based on passing both parts of the Medical Council of Canada Qualifying Examination.

b. The Medical Council of Canada may be contacted at 1021 Thomas Spratt Place, Ottawa, Ontario, Canada K1G 5L5 or (613) 520-2240.

9.7(8) *State licensing examinations.* The Iowa board of medicine administered a state licensing examination until 1968. Licensing examinations administered by the Iowa board of medicine or another U.S. jurisdiction prior to 1974 are accepted if the examination was passed according to criteria established by that state at the time and led to licensure in that state.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.8(147,148) Permanent licensure application review process. The process below shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve

provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

9.8(1) An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial licensure fee.

9.8(2) After reviewing each application, board staff shall notify the applicant about how to resolve any problems. An applicant shall provide additional information when requested by staff or the board.

9.8(3) If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may administratively grant the license. The staff may grant the license without having received a report on the applicant from the FBI.

9.8(4) If the final review indicates questions or concerns that cannot be remedied by continued communication with the physician, the executive director, director of licensure and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

a. If there is no current concern, staff shall administratively grant the license.

b. If any concern exists, the application shall be referred to the committee.

9.8(5) Staff shall refer to the committee for review matters which include but are not limited to: falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

9.8(6) If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant the license administratively.

9.8(7) If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

a. Request an investigation;

b. Request that the applicant appear for an interview;

c. If the physician has not engaged in active clinical practice or board-approved training in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) Successfully pass a competency evaluation approved by the board;

(2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board;

(3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or

(4) Successfully complete a reentry to practice program or monitoring program approved by the board.

d. Grant a license;

e. Grant a license under certain terms and conditions or with certain restrictions;

f. Request that the applicant withdraw the licensure application; or

g. Deny a license.

9.8(8) The board shall consider applications and recommendations from the committee and shall:

a. Request further investigation;

b. Require that the applicant appear for an interview;

c. If the physician has not engaged in active clinical practice or board-approved training in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) Successfully pass a competency evaluation approved by the board;

(2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board;

(3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or

(4) Successfully complete a reentry to practice program or monitoring program approved by the board.

d. Grant a license;

e. Grant a license under certain terms and conditions or with certain restrictions;

f. Request that the applicant withdraw the licensure application; or

g. Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in rule 653—9.17(147,148).
[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.9(147,148) Licensure application cycle.

9.9(1) *Failure to submit application materials.* If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

9.9(2) *Reactivation of the application.* To reactivate the application, an applicant shall submit a nonrefundable fee for reactivation of the application as specified in 653—paragraph 8.4(1)*"b"* within 30 days. If the application is not reactivated within 30 days, the application for licensure is withdrawn and the applicant must reapply and submit a new nonrefundable application fee and a new application, documents and core credentials.

9.9(3) *Period of reactivation.* The period for reactivation of application shall extend 90 days from the date the request and fee are received in the board office. During this period, the applicant shall update core credentials and submit the remaining requested materials. If the applicant does not update core credentials or submit all materials during the 90-day period of reactivation, the application for licensure is withdrawn and the applicant must reapply and submit a new nonrefundable application fee and a new application, documents and core credentials.
[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.10(147,148) Discretionary board actions on licensure applications. As circumstances warrant, the board may determine that any applicant for licensure is subject to the following:

9.10(1) The board may impose limits or restrictions on the practice of any applicant in this state that are equal in force to the limits or restrictions imposed on the applicant by any jurisdiction.

9.10(2) The board may defer final action on an application for licensure if there is an investigation or disciplinary action pending against an applicant in any jurisdiction until such time as the board is satisfied that licensure of the applicant poses no risk to the health and safety of Iowans.

9.10(3) The board is not precluded from taking disciplinary action after licensure is granted related to issues that arose in the licensure application process.
[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.11(147,148) Issuance of a license.

9.11(1) *Issuance.* Upon the granting of permanent or administrative medicine licensure, staff shall issue a license to practice that shall expire on the first day of the licensee's birth month.

a. Licenses of persons born in even-numbered years shall expire in an even-numbered year, and licenses of persons born in odd-numbered years shall expire in an odd-numbered year.

b. The license shall not be issued for a period less than two months or greater than two years and two months, in accordance with the licensee's month and year of birth.

c. When a resident physician receives a permanent Iowa license, the resident physician license shall immediately become inactive.

d. When a physician with a special license receives a permanent Iowa license, the special license shall immediately become inactive.

e. When a physician with a permanent Iowa license receives an Iowa administrative medicine license, the permanent Iowa license shall immediately become inactive.

f. A physician with an active permanent Iowa license is ineligible for an Iowa resident license.

9.11(2) *Display of license certificate.* The license certificate shall be displayed in the licensee's primary location of practice.
[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.12(147,148) Notification required to change the board's data system.

9.12(1) *Change of contact information.* A licensee shall notify the board of any change in the home address, the address of the place of practice, home or practice telephone number, or personal e-mail address regularly used by the applicant or licensee for correspondence with the board within one month of the change.

9.12(2) *Change of name.* A licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

9.12(3) *Deceased.* A licensee file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate or other reliable information of the licensee's death.

9.12(4) *Practice name.* A licensee shall practice under the licensee's full legal name.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.13(147,148) Renewal of a permanent or administrative medicine license.

9.13(1) *Renewal notice.* Staff shall send a renewal notice to each licensee at least 60 days prior to the expiration of the license. The renewal notice may be sent by e-mail or by regular mail at the discretion of staff. If e-mail is used for notification of licensure renewal, the notice shall be sent to the personal e-mail address specified in subrule 9.12(1).

9.13(2) *Licensee obligation.* The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

9.13(3) *Renewal application requirements.* A licensee seeking renewal shall submit a completed renewal application; information on continuing education, training on chronic pain management, training on end-of-life care, and training on identifying and reporting abuse; and the required fee prior to the expiration date on the current license.

a. Renewal fee.

(1) The fees for renewal made via paper application or via on-line application are specified in 653—subparagraph 8.4(1)*"c"*(1) and are assessed per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

(2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. "Active duty" means full-time training or active service in the U.S. armed forces, reserves or national guard.

(3) A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 653—paragraph 8.4(1)*"d."*

b. The requirements for continuing education and training on identifying and reporting abuse are found in 653—Chapter 11.

c. The first renewal fee shall be prorated on a monthly basis according to the date of issuance and the physician's month and year of birth, if the initial permanent or administrative medicine license was issued for a period of less than 24 months.

9.13(4) *Issuance of a renewal.* Upon receiving the completed renewal application, staff shall administratively issue a two-year license that expires on the first day of the licensee's birth month. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration.

9.13(5) *Renewal penalties.* If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, the licensee shall be charged a penalty fee as set forth in 653—paragraph 8.4(1)*"d."*

9.13(6) *Failure to renew.* Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid or inactive is prohibited from practice until the license is reinstated in accordance with rule 653—9.15(147,148).

a. In order to ensure that the license will not become inactive when a paper renewal form is used, the completed renewal application and appropriate fees must be received in the board office by the fifteenth of the month prior to the month the license becomes inactive. For example, a licensee whose license expires on January 1 has until March 1 to renew the license or the license becomes inactive and invalid. The licensee must submit and the board office must receive the renewal materials prior to or on February 15 to ensure that the license will be renewed prior to becoming inactive and invalid on March 1.

b. In order to ensure that the license will not become inactive when on-line renewal is used, the licensee must complete the on-line renewal prior to midnight of the last day of the month in the month after the expiration date on the license. For example, a licensee whose license expiration date is January 1 must complete the on-line renewal before midnight on the last day of February; the license becomes inactive and invalid at 12:01 a.m. on March 1.

9.13(7) *Display of license.* Renewal licenses shall be displayed along with the license certificate in the primary location of practice.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 0871C**, IAB 7/24/13, effective 8/28/13; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.14(147,148) Inactive status and reinstatement of a license.

9.14(1) *Definition of inactive status.* An inactive license is any license that is not a current, active license.

a. "Inactive status" may include licenses formerly known as delinquent, lapsed, or retired.

b. A physician with an inactive license may not practice medicine until the license is reinstated to current, active status.

c. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated to current, active status. A licensee who practices under an Iowa license when the license is inactive may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, or other available legal remedies.

9.14(2) *Mechanisms for becoming inactive.* A licensee seeking to become inactive may do so by submitting a written request to the board office or by failing to renew a license by the first day of the third month after the expiration date. For example, a licensee whose license expires on January 1 will be considered inactive if the license is not renewed by March 1.

9.14(3) *Fee.* There is no fee to become inactive.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.15(147,148) Reinstatement of an unrestricted Iowa license.

9.15(1) *Reinstatement within one year of the license's becoming inactive.* An individual whose license is in inactive status for up to one year and who wishes to reinstate the license shall submit a completed renewal application; the reinstatement fee; documentation of continuing education; and, if applicable, documentation on training on chronic pain management, end-of-life care, and identifying and reporting abuse. All of the information shall be received in the board office within one year of the license's becoming inactive for the applicant to reinstate under this subrule. For example, a physician whose license became inactive on March 1 has until the last day of the following February to renew under this subrule.

a. *Fee for reinstatement of an unrestricted Iowa license within one year of the license's becoming inactive.* The reinstatement fee is specified in 653—paragraph 8.4(1)*"g"* when the license in the most recent license period had been granted for less than 24 months; in that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

b. *Continuing education and training requirements.* The requirements for continuing education, training on chronic pain management, training on end-of-life care, and training on identifying and reporting abuse are found in 653—Chapter 11. Applicants for reinstatement shall provide documentation of having completed:

(1) The number of hours of category 1 credit needed for renewal in the most recent license period. None of the credits obtained in the inactive period may be carried over to a future license period; and

(2) Training on chronic pain management, end-of-life care, and identifying and reporting abuse, if applicable, within the previous five years.

c. Issuance of a reinstated license. Upon receiving the completed application, staff shall administratively issue a license that expires on the renewal date that would have been in effect if the licensee had renewed the license before the license expired.

d. Reinstatement application process. The applicant who fails to submit all reinstatement information required within 365 days of the license's becoming inactive shall be required to meet the reinstatement requirements of 9.15(2). For example, if a physician's license expires on January 1, the completed reinstatement application is due in the board office by December 31, in order to meet the requirements of this subrule.

9.15(2) *Reinstatement of an unrestricted Iowa license that has been inactive for one year or longer.* An individual whose license is in inactive status and who has not submitted a reinstatement application that was received by the board within one year of the license's becoming inactive shall follow the application cycle specified in this rule and shall satisfy the following requirements for reinstatement:

a. Submit an application for reinstatement to the board upon forms provided by the board. The application shall require the following information:

(1) Full legal name, date and place of birth, license number, home address, mailing address, principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board;

(2) A photograph of the applicant suitable for positive identification;

(3) A chronology accounting for all time periods from the date of initial licensure;

(4) Every jurisdiction in which the applicant is or has been authorized to practice including license numbers and dates of issuance;

(5) Documentation of successful completion of resident training approved by the board as specified in paragraph 9.3(1)*"c"* which was completed since the time of initial licensure. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative;

(6) Verification of the applicant's hospital and clinical staff privileges, and other professional experience for the past five years if requested by the board;

(7) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(8) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care. Copies of evaluations, verification of medical condition from treating physicians, or other documentation may be requested if needed during the review process;

(9) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

(10) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside. Copies of the legal documents may be requested if needed during the review process; and

(11) A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

b. Pay the reinstatement fee plus the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks specified in 653—paragraph 8.4(1)*"f."*

c. Provide documentation of completion of 40 hours of category 1 credit within the previous two years and documentation of training on chronic pain management, end-of-life care, and identifying and reporting abuse as specified in 653—Chapter 11.

d. If the physician has not engaged in active clinical practice or board-approved training in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) Successfully pass a competency evaluation approved by the board;

(2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board;

(3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or

(4) Successfully complete a reentry to practice program or monitoring program approved by the board.

e. An individual who is able to submit a letter from the board with different reinstatement or reactivation criteria is eligible for reinstatement based on those criteria.

9.15(3) *Reinstatement application cycle and process.* The cycle and process are the same as described in rules 653—9.8(147,148) and 653—9.9(147,148).

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 0215C**, IAB 7/25/12, effective 8/29/12; **ARC 1187C**, IAB 11/27/13, effective 1/1/14; **ARC 2524C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.16(147,148) Reinstatement of a restricted Iowa license. A physician whose license has been suspended or revoked following a disciplinary proceeding is required to seek reinstatement pursuant to 653—Chapter 26.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10]

653—9.17(147,148) Denial of licensure or determined to be ineligible for licensure through the IMLC or termination of a license issued through the IMLC.

9.17(1) *Preliminary notice of denial.* Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

9.17(2) *Appeal procedure.* An applicant who has received a preliminary notice of licensure denial or a Letter of Qualification that asserts the board has determined that the applicant is ineligible for licensure through the IMLC, or a notice that a medical license is ineligible for renewal through the IMLC, may appeal and request a hearing on the issues related to the preliminary notice of licensure denial or ineligibility for licensure or licensure renewal through the IMLC by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the notice was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure, or a Letter of Qualification that asserts the applicant is eligible for licensure through the IMLC, or the applicant is eligible for licensure renewal through the IMLC.

9.17(3) *Hearing.* If an applicant appeals the preliminary notice of licensure denial or a determination of ineligibility for licensure or licensure renewal through the IMLC and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with 653—25.30(17A).

a. Hearings for applicants denied licensure, or determined to be ineligible for licensure or licensure renewal through the IMLC are contested cases open to the public.

b. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.

c. Evidence supporting the denial of the license or the determination of ineligibility for licensure or licensure renewal through the IMLC may be presented by an assistant attorney general.

d. 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 or licensure eligibility or licensure renewal through IMLC.

e. The board, after a hearing on license denial, may grant or deny the application for licensure. The board shall state the reasons for its decision and may grant the license, grant the license with restrictions or deny the license. The final decision is a public record. After a hearing on ineligibility for licensure renewal through the IMLC, the board may uphold the termination of the license or allow the licensee to renew. The board shall state the reasons for its decision, which is a public record. After a hearing on a Letter of Qualification determination, the board may uphold the ineligible determination or issue a Letter of Qualification asserting the applicant is eligible for licensure through the IMLC. The board shall state the reasons for its decision, which is a public record.

f. Judicial review of a final order of the board denying licensure, issuing a license with restrictions, terminating a license not eligible for renewal through the IMLC, or upholding a Letter of Qualification asserting that an applicant is ineligible for licensure through the IMLC 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.

9.17(4) *Finality.* If an applicant does not appeal a preliminary notice of denial in accordance with 9.17(2), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

9.17(5) *Failure to pursue appeal.* If an applicant appeals a preliminary notice of licensure denial or a notice of ineligibility for licensure or licensure renewal through the IMLC, in accordance with 9.17(2), but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of licensure denial or a notice of ineligibility for licensure or licensure renewal through the IMLC, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and that the preliminary notice of licensure denial or a notice of ineligibility for licensure or licensure renewal through the IMLC will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of licensure denial or a notice of ineligibility for licensure or licensure renewal through the IMLC becomes final. A final decision under this rule is a public record.

[**ARC 7756B**, IAB 5/6/09, effective 6/10/09; **ARC 8554B**, IAB 3/10/10, effective 4/14/10; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.18(17A,147,148,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

[**ARC 8554B**, IAB 3/10/10, effective 4/14/10]

653—9.19(147,148) Relinquishment of license to practice. A person's permanent license to practice medicine and surgery, osteopathic medicine and surgery, or administrative medicine shall be deemed relinquished if the person fails to apply for renewal or reinstatement of the license within five years after its expiration.

9.19(1) A license shall not be reinstated, reissued, or restored once it is relinquished. The person may apply for a new license pursuant to Iowa Code sections 148.3 and 148.11 and 653—Chapters 9 and 10.

9.19(2) The relinquishment of license may be stayed if, at the date of relinquishment, there is an active:

a. Evaluation order pursuant to Iowa Code section 272C.9(1) and rule 653—24.4(272);

b. Combined statement of charges and settlement agreement pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and rule 653—25.3(17A);

c. Statement of charges pursuant to Iowa Code section 17A.12(2) and rule 653—25.4(17A);

d. Settlement agreement pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and rule 653—25.17(272C);

e. Final decision pursuant to Iowa Code sections 17A.12 and 272C.6 and rule 653—25.24(17A); or

f. Application for reinstatement of the license pursuant to rule 653—9.15(147,148) or 653—9.16(147,148).

[**ARC 2346C**, IAB 1/6/16, effective 2/10/16]

653—9.20(147,148) Administrative medicine licensure.

9.20(1) *Application.* An application for an administrative medicine license shall be made to the board of medicine pursuant to the requirements established in Iowa Code section 148.3 and this chapter. An applicant for an administrative medicine license shall be subject to all of the permanent licensure requirements established in Iowa Code section 148.3 and this chapter, except that the applicant shall not be required to demonstrate that the applicant has engaged in active clinical practice in the past three years as outlined in paragraphs 9.8(7)*"c"* and 9.15(2)*"d."*

The board may, in its discretion, issue an administrative medicine license authorizing the licensee to practice administrative medicine only, as defined by this rule. The license shall be designated "administrative medicine license."

9.20(2) *Fees.* All license and renewal fees shall be paid to the board in accordance with 653—Chapters 8 and 9.

9.20(3) *Demonstration of competence.*

a. If an applicant for initial licensure or reinstatement of an administrative medicine license has not actively practiced administrative or clinical medicine in a jurisdiction of the United States or Canada in the past three years, the board may require the applicant to demonstrate competence in a method prescribed by the board in accordance with paragraphs 9.8(7)*"c"* and 9.15(2)*"d."*

b. A physician who holds an administrative medicine license and has not engaged in active clinical practice in a jurisdiction of the United States or Canada for more than three years may be required to demonstrate competence to practice clinical medicine in a method prescribed by the board in accordance with paragraphs 9.8(7)*"c"* and 9.15(2)*"d"* prior to obtaining a permanent Iowa medical license.

9.20(4) *No exemptions to laws and rules.* A physician with an administrative medicine license shall be subject to the same laws and rules governing the practice of medicine as a person holding a permanent Iowa medical license.

9.20(5) *Only one active license at a time.* When applicable, a person's active Iowa permanent or Iowa resident license shall immediately become inactive upon issuance of an administrative license.

9.20(6) *Interstate medical licensure compact.* A physician who holds only an administrative medicine license may not be eligible for licensure under the interstate medical licensure compact.

[**ARC 2523C**, IAB 5/11/16, effective 6/15/16; **ARC 3587C**, IAB 1/17/18, effective 2/21/18]

653—9.21(147,147B,148) Licensure through IMLC.

9.21(1) *Requirements for seeking a Letter of Qualification from the Iowa board of medicine.* An applicant shall meet all of the following requirements:

a. Designate Iowa as state of principal license. To designate Iowa as state of principal license, the physician must possess a full, unrestricted, permanent Iowa medical license and meet one of the following requirements at the time the application for a Letter of Qualification is reviewed by board staff:

(1) Iowa is the physician's primary residence, or

(2) At least 25 percent of the physician's medical practice occurs in Iowa, or

(3) The physician's employer is located in Iowa, or

(4) If the applicant does not meet any of the requirements under (1), (2), or (3), the applicant can designate Iowa as the state of principal license if Iowa is the applicant's state of residence for the purposes of federal income tax.

b. Provide evidence of the following qualifications:

(1) Graduation from a medical school accredited by the LCME, COCA, or a medical school listed in the International Medical Education Directory or its equivalent.

(2) Passage of each component of the USMLE or the COMLEX within three attempts, or any of its predecessor examinations accepted by the board as an equivalent examination for licensure purposes as prescribed in rule 653—9.7(147,148).

(3) Successful completion of graduate medical education approved by the ACGME or the AOA. "Successful completion" means participation in an ACGME or AOA postgraduate training program that achieves ABMS or AOA board eligibility status. A one-year transitional internship or a one-year rotating internship does not qualify as graduate medical education required in Iowa Code section 147B.1(2)*"k"*(3) and IMLC Section 5.4(1)*"c."*

(4) Hold specialty certification or a time-unlimited specialty certificate recognized by the ABMS or the AOA. The specialty certification or a time-unlimited specialty certificate does not have to be maintained once a physician is determined to be eligible for licensure through the IMLC.

(5) Has never been convicted of or received adjudication, deferred adjudication, community supervision, or deferred disposition for any criminal offense by a court of appropriate jurisdiction.

(6) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license.

(7) Has never had a controlled substance license or permit suspended or revoked by a state or the U.S. Drug Enforcement Administration (DEA).

(8) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

9.21(2) *Application.* A physician seeking licensure through the IMLC who is qualified to designate Iowa as state of principal license shall file an application for a Letter of Qualification with the interstate commission at www.imlcc.org. The application shall require the following:

a. Payment of a nonrefundable service fee to the interstate commission for an application for a Letter of Qualification. This service fee includes the cost for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) as specified in 653—subrule 8.3(1); and

b. Completion and submission of forms provided by the board, including required core credentials, documents, a completed fingerprint packet and the criminal history background checks by the DCI and the FBI, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

9.21(3) *Letter of Qualification.*

a. After receipt of all application materials, the board shall:

(1) Evaluate the applicant's eligibility for licensure through the IMLC by primary source verification of medical education, graduate medical education, licensing examination results, and other qualifications as determined by IMLC rule;

(2) Perform a criminal background check; and

(3) Issue a Letter of Qualification to the applicant verifying or denying the applicant's eligibility. The applicant may appeal a determination of eligibility to the Iowa board of medicine within 30 days of issuance of the Letter of Qualification according to the processes outlined in rule 653—9.17(147,148).

b. The Letter of Qualification is valid for a period of 365 days from its date of issuance to request licensure in a member state. During this period, the physician must maintain eligibility to claim Iowa as the state of principal license or designate a new state of principal license.

9.21(4) *Expedited licensure.* Physicians who have a valid Letter of Qualification may obtain licensure in Iowa through the IMLC. To obtain a permanent Iowa license through the IMLC, a qualified physician shall:

a. Complete the application process at the IMLC's website, www.imlcc.org.

b. Pay the licensure fee specified in 653—subrule 8.3(2) and any service fees that are required by the IMLC.

c. Comply with the continuing medical education requirements of the board, including mandatory trainings specified in 653—Chapter 11.

9.21(5) *Validity of a license issued through the IMLC.* A license issued through the IMLC is valid for a period consistent with other permanent licenses issued by the board. An Iowa license issued through the IMLC shall be deemed terminated if the licensee fails to maintain a state of principal license.

9.21(6) *Disciplinary actions against licenses issued through the IMLC.*

a. Physicians holding an Iowa license issued through the IMLC are subject to the laws and rules governing the practice of medicine in Iowa.

b. Any disciplinary action taken by another member board of the IMLC against a physician licensed through IMLC shall be deemed unprofessional conduct which may be subject to discipline by the board in addition to any other violation of the board's rules deemed appropriate by the board.

c. If a license issued through the IMLC to a physician is revoked, surrendered, or relinquished in lieu of discipline, or suspended by a member board of the IMLC, then the physician's Iowa expedited license is automatically and immediately suspended, without further action needed, for a period of 90 days upon entry of an order by the board. The 90-day suspension may be terminated early by the board.

d. Any disciplinary action taken by another member board not in the state of principal license may be deemed conclusive as to the matter of law and fact decided, and the board may either impose the same or lesser sanctions against the physician so long as such sanctions are consistent with the board's laws and rules or pursue separate disciplinary action against the physician pursuant to the board's laws and rules.

e. If the Iowa board, as the physician's state of principal license, revokes or suspends the physician's license, or accepts a license surrender in lieu of discipline, then all licenses issued to the physician through the IMLC shall automatically be placed, without further action necessary by any member board, on the same status. If the Iowa board subsequently reinstates the physician's license, the licenses issued by the other member boards shall remain encumbered until the member boards take action to reinstate the licenses.

9.21(7) *Renewal of license issued through the IMLC.* To be eligible for renewal of a license issued through the IMLC, a licensee shall:

a. Complete an online renewal application on a form provided by the IMLC at www.imlcc.org.

b. Complete an attestation that the licensee:

(1) Maintains eligibility to designate a state as the state of principal license, pursuant to paragraph 9.21(1)*"a"*;

(2) Maintains a full and unrestricted license in the designated state of principal license;

(3) Has not been convicted of or received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(4) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(5) Has not had a controlled substance license or permit suspended or revoked by a state or the U.S. DEA.

c. Pay licensure fee for the renewal of a license issued through the IMLC and pay any service fee assessed by the IMLC.

d. If audited, submit verification of completion of continuing medical education requirements set forth in 653—Chapter 11.

9.21(8) *Waivers.* The laws and rules relating to the IMLC cannot be waived.

9.21(9) *Advisory opinions.* The board will recognize advisory opinions issued by the interstate commission on the meaning or interpretation of the IMLC, its bylaws, rules and actions when determining an applicant's eligibility for licensure through the IMLC.

[**ARC 3587C**, IAB 1/17/18, effective 2/21/18]

These rules are intended to implement Iowa Code chapters 17A, 147, 147B, 148, and 272C.

[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]

[Filed 2/14/02, Notice 11/28/01—published 3/6/02, effective 4/10/02]

[Filed emergency 4/12/02—published 5/1/02, effective 4/12/02]

[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 6/5/02]

[Filed 6/6/02, Notice 5/1/02—published 6/26/02, effective 7/31/02]
[Filed emergency 10/9/02 after Notice 8/21/02—published 10/30/02, effective 10/9/02]
[Filed emergency 2/7/03 after Notice 1/8/03—published 3/5/03, effective 2/7/03]
[Filed emergency 8/28/03 after Notice 7/23/03—published 9/17/03, effective 9/1/03]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 9/9/04, Notice 8/4/04—published 9/29/04, effective 11/3/04]◊
[Filed 12/30/04, Notice 11/24/04—published 1/19/05, effective 2/23/05]
[Filed 6/17/05, Notice 5/11/05—published 7/6/05, effective 8/10/05]
[Filed emergency 8/30/05 after Notice 7/6/05—published 9/28/05, effective 10/1/05]
[Filed 10/12/06, Notice 8/2/06—published 11/8/06, effective 1/1/07]
[Filed 12/14/06, Notice 11/8/06—published 1/17/07, effective 2/21/07]
[Filed emergency 2/8/07 after Notice 1/3/07—published 2/28/07, effective 3/1/07]
[Filed emergency 11/21/07 after Notice 10/10/07—published 12/19/07, effective 1/1/08]
[Filed 4/3/08, Notice 2/27/08—published 4/23/08, effective 5/28/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]◊
[Filed ARC 7756B (Notice ARC 7607B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]
[Filed ARC 8554B (Notice ARC 8379B, IAB 12/16/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 0215C (Notice ARC 0090C, IAB 4/18/12), IAB 7/25/12, effective 8/29/12]
[Filed ARC 0871C (Notice ARC 0697C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 1187C (Notice ARC 0943C, IAB 8/7/13), IAB 11/27/13, effective 1/1/14]
[Filed ARC 2346C (Notice ARC 2203C, IAB 10/14/15), IAB 1/6/16, effective 2/10/16]
[Filed ARC 2523C (Notice ARC 2359C, IAB 1/6/16), IAB 5/11/16, effective 6/15/16]
[Filed ARC 2524C (Notice ARC 2360C, IAB 1/6/16), IAB 5/11/16, effective 6/15/16]
[Filed ARC 3587C (Notice ARC 3368C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]

◊ Two or more ARCs

CHAPTER 10
RESIDENT, SPECIAL AND TEMPORARY PHYSICIAN LICENSURE

[Prior to 5/30/01, see 653—Chapter 11]

653—10.1(147,148) Definitions.

"ABMS" means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

"ACGME" means Accreditation Council for Graduate Medical Education, an accreditation body that is responsible for accreditation of post-medical school training programs in medicine and surgery in the United States of America.

"AMA" means the American Medical Association, a professional organization of physicians and surgeons.

"Any jurisdiction" means any state, the District of Columbia or territory of the United States of America or any other nation.

"Any United States jurisdiction" means any state, the District of Columbia or territory of the United States of America.

"AOA" means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

"Applicant" means a person who seeks authorization to practice medicine and surgery or osteopathic medicine and surgery in this state by making application to the board.

"Approved abuse education training program" means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

"Board" means Iowa board of medicine.

"Board-approved activity" means one of the following activities:

1. Covering for an Iowa-licensed physician who unexpectedly is unavailable to provide medical care to the physician's patients;
2. Demonstrating or proctoring that involves providing hands-on patient care to patients in Iowa;
3. Conducting a procedure on a patient in Iowa when the consultant's expertise in the procedure is greater than that of the Iowa-licensed physician who requested the procedure;
4. Providing medical care to patients in Iowa, if the physician is enrolled in an out-of-state resident training program and does not hold a resident or permanent license in the home state of the resident training program;
5. Serving as a camp physician;
6. Participating as a learner in a program of further medical education that allows hands-on patient care when the physician does not currently hold a license in good standing in any United States jurisdiction; or
7. Any other activity approved by the board.

"Board-approved resident training program" means a hospital-affiliated graduate medical education program accredited by ACGME, AOA, RCPSC, or CFPC at the time the applicant is enrolled in the program.

"Category 1 credit" means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of AOA

that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

"CFPC" means the College of Family Physicians of Canada.

"Committee" means the licensure committee of the board.

"ECFMG" means the Educational Commission for Foreign Medical Graduates, an organization that assesses the readiness of international medical school graduates to enter ACGME-approved residency programs in the United States of America.

"FCVS" means the Federation Credentials Verification Service, a service under the Federation of State Medical Boards that verifies and stores core credentials for retrieval whenever needed.

"FSMB" means the Federation of State Medical Boards, the organization of medical boards of the United States of America.

"Incidentally called into this state in consultation with a physician and surgeon licensed in this state" as set forth in Iowa Code section 148.2(5) means all of the following shall be true:

1. The consulting physician shall be involved in the care of patients in Iowa only at the request of an Iowa-licensed physician.
2. The consulting physician has a license in good standing in another United States jurisdiction.
3. The consulting physician provides expertise and acts in an advisory capacity to an Iowa-licensed physician. The consulting physician may examine the patient and advise an Iowa-licensed physician as to the care that should be provided, but the consulting physician may not personally perform procedures, write orders, or prescribe for the patient.
4. The consulting physician practices in Iowa for a period not greater than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day.
5. The Iowa-licensed physician requesting the consultation retains the primary responsibility for the management of the patient's care.

"LCME" means Liaison Committee on Medical Education, an organization that accredits educational institutions granting degrees in medicine and surgery. The board approves programs that are accredited by LCME.

"Medical degree" means a degree of doctor of medicine and surgery or osteopathic medicine and surgery or comparable education from an international medical school.

"Permanent licensure" means licensure granted after review of the application and credentials to determine that the individual is qualified to enter into practice. The individual may only practice when the license is in current, active status.

"Postgraduate training" means graduate medical education, e.g., an internship, residency or fellowship, in a hospital-affiliated training program approved by the board at the time the applicant was enrolled in the program.

"Practice" means the practice of medicine and surgery or osteopathic medicine and surgery.

"RCPSC" means the Royal College of Physicians and Surgeons of Canada.

"Resident physician" means a physician enrolled in an internship, residency or fellowship.

"Resident training program" means a hospital-affiliated graduate medical education program that enrolls interns, residents or fellows and may be referred to as a postgraduate training program for purposes of licensure.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

"Training for chronic pain management" means required training on chronic pain management identified in 653—Chapter 11.

"Training for end-of-life care" means required training on end-of-life care identified in 653—Chapter 11.

"Training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

"Uniform application for physician state licensure" means a Web-based application that is intended to standardize and simplify the licensure application process for state medical licensure. The Federation of State Medical Boards created and maintains the application. This application is used for all license types issued by the Iowa board of medicine.

[**ARC 0216C**, IAB 7/25/12, effective 8/29/12]

653—10.2(148) Licensure required. Licensure is required for practice in Iowa as identified in Iowa Code section 148.1; the exceptions are identified in 653—subrule 9.2(2). Provisions for permanent physician licensure are found in 653—Chapter 9; provisions for resident, special and temporary physician licensure are found in this chapter.

653—10.3(147,148) Resident physician licensure.

10.3(1) *General provisions.*

a. The resident physician license shall authorize the licensee to practice as an intern, resident or fellow while under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery in a board-approved resident training program in Iowa. When the ACGME, AOA, RCPSC, or CFPC fails to offer accreditation for a fellowship or the fellowship fails to seek accreditation, the board shall approve the program if the parent program is accredited by one of the aforementioned accrediting bodies. However, completion of one or more years of a program that itself lacks such accreditation does not fulfill the one-year resident training requirement for permanent licensure.

b. An Iowa resident physician license or an Iowa permanent physician license is required of any resident physician enrolled in an Iowa resident training program and practicing in Iowa.

c. A resident physician license issued on or after February 14, 2003, shall expire on the expected date of completion of the resident training program as indicated on the licensure application. A resident physician license may be extended thereafter at the discretion of the board.

d. A resident physician license is valid only for practice in the program designated in the application. When the physician leaves that program, the license shall immediately become inactive. The director of the resident training program shall notify the board within 30 days of the licensee's terminating from the program.

e. A resident physician licensee who changes resident training programs shall apply for a new resident physician license as described in subrule 10.3(3). Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program. For example, if a residency requires one year in internal medicine prior to three years in dermatology, the individual may apply initially for a four-year resident license to cover the bundled program. Relicensure is not required if the individual holds a permanent physician license in Iowa.

f. A visiting resident physician may come to Iowa to practice as a part of the physician's resident training program if the physician is under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary physician license is required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148)).

g. An Iowa license is not required for residents when they are training in a federal facility in Iowa. An Iowa license is not required for faculty who are teaching in and employed by a federal facility in Iowa and who are licensed in another state.

h. The director of a resident training program that enrolls a resident with an Iowa resident physician license shall report annually on October 1 on the resident's progress and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action. The board shall inform the program directors on September 1 of the impending deadline.

i. A resident physician licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

j. A resident physician licensee's file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate.

10.3(2) *Resident licensure eligibility.* To be eligible for a resident license, an applicant shall meet all of the following requirements:

a. Fulfill the application requirements specified in subrule 10.3(3).

b. Be at least 20 years of age.

c. Hold a medical degree from an educational institution approved by the board at the time the applicant graduated and was awarded the degree.

(1) Educational institutions approved by the board shall be fully accredited by an accrediting agency recognized by the board as schools of instruction in medicine and surgery or osteopathic medicine and surgery and empowered to grant academic degrees in medicine.

(2) The accrediting bodies currently recognized by the board are:

1. LCME for the educational institutions granting degrees in medicine and surgery; and

2. AOA for educational institutions granting degrees in osteopathic medicine and surgery.

(3) If the applicant holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the applicant shall:

1. Hold a valid certificate issued by ECFMG, or

2. Have successfully completed a fifth pathway program established in accordance with AMA criteria.

10.3(3) *Resident physician licensure application.*

a. *Requirements.* To apply for resident physician licensure, an applicant shall:

(1) Pay a nonrefundable application fee of $100 plus the $45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

(2) Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

b. *Application.* The application shall require the following information:

(1) Full legal name, date and place of birth, home address, and mailing address;

(2) A photograph of the applicant suitable for positive identification;

(3) A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance;

(4) A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;

(5) A photocopy of the applicant's medical degree issued by an educational institution.

1. A complete translation shall be submitted for any diploma not written in English. An official transcript, written in English and received directly from the school, verifying graduation from medical school is a suitable alternative. An official FCVS Physician Information Profile is a suitable alternative.

2. If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution;

(6) If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a valid ECFMG certificate or evidence of successful completion of a fifth pathway program in accordance with criteria established by the AMA. An official FCVS Physician Information Profile is a suitable alternative;

(7) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health care facility in any jurisdiction;

(8) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;

(9) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

(10) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; and

(11) A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

10.3(4) *Resident license application review process.* The process below shall be utilized to review each application for a resident license.

a. An application shall be considered open from the date the application form is received in the board office with the nonrefundable resident licensure fee.

b. After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may grant administratively a resident license.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, director of licensure and administration, and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall grant administratively a resident license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, substance abuse, competency, physical or mental illness, or educational disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively a resident license.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) Grant a resident physician license for a particular residency program;

(4) Grant a license under certain terms and conditions or with certain restrictions;

(5) Request that the applicant withdraw the licensure application; or

(6) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) Grant a resident physician license for a particular residency program;

(4) Grant a license under certain terms and conditions or with certain restrictions;

(5) Request that the applicant withdraw the licensure application; or

(6) Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in 653—9.15(147,148).

10.3(5) *Resident license application cycle.* If the applicant does not submit all materials within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

10.3(6) *Extension of a resident physician license.*

a. If the licensee fails to complete the program by the expiration date on the license, the licensee has a one-month grace period in which to complete the program or secure an extension from the board.

b. The resident physician licensee is responsible for applying for an extension if the licensee has not been granted permanent physician licensure and the licensee will not complete the program within the grace period. The following extension application materials are due in the board office prior to the expiration of the license:

(1) A letter requesting an extension and providing an explanation of the need for an extension;

(2) The extension fee of $25; and

(3) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

c. Failure of the licensee to extend a license within one month following the expiration date shall cause the license to become inactive and invalid. For example, a license that expires on June 26 becomes inactive and invalid on July 26. A licensee whose license is inactive is prohibited from practice until the license is extended or replaced by a permanent physician or new resident physician license.

d. To extend an inactive resident license within one year of becoming inactive, an applicant shall submit the following:

(1) A letter requesting an extension and providing an explanation of the need for an extension;

(2) The extension fee of $25;

(3) A $50 late fee; and

(4) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

e. If more than one year has passed since the resident license became inactive, the applicant shall apply for a new resident license as described in subrule 10.3(3).

10.3(7) *Continuing education and training.* Applicants seeking an extension of a resident physician license or an extension of an inactive resident physician license are not required to complete continuing medical education or training requirements as identified in 653—Chapter 11.

10.3(8) *Review process for extending a resident license.* The process below shall be utilized to review each request for an extension of a resident license.

a. An extension request shall be considered open from the date the required letters and nonrefundable extension fee are received in the board office.

b. After reviewing each request for extension, staff shall notify the licensee or designee about how to resolve any problems identified by the reviewer. The applicant for license extension shall provide additional information when requested by staff or the board.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for continued licensure, staff may grant administratively an extension to a resident license.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and administration, and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall grant administratively an extension to a resident license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information in the request, criminal record, substance abuse, competency, physical or mental illness, or educational disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively an extension to a resident license.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the licensee appear for an interview;

(3) Grant a license under certain terms and conditions or with certain restrictions;

(4) Request that the licensee withdraw the request for an extension; or

(5) Deny a request for an extension of the license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the licensee appear for an interview;

(3) Grant an extension to the resident physician license;

(4) Grant an extension to the resident physician license under certain terms and conditions or with certain restrictions;

(5) Request that the licensee withdraw the request for an extension; or

(6) Deny a request for an extension of the license. The board may deny an extension of a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial of an extension is set forth in 653—9.15(147,148).

10.3(9) *An Iowa resident physician who changes resident training programs in Iowa.* A resident physician who changes resident training programs shall acquire new resident physician licensure or permanent licensure prior to entering the new resident training program. Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program.

10.3(10) *Discipline of a resident license.* The board may discipline a license for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code section 147.55 or 148.6, Iowa Code chapter 272C, and 653—Chapter 23.

10.3(11) *Transition from a resident license to a permanent license.* When a resident physician receives a permanent Iowa license, the resident physician license shall immediately become inactive.

[**ARC 0216C**, IAB 7/25/12, effective 8/29/12; **ARC 1187C**, IAB 11/27/13, effective 1/1/14]

653—10.4(147,148) Special licensure.

10.4(1) *General provisions.*

a. The board may grant a special license to a physician who is an academic staff member of a college of medicine or osteopathic medicine if that physician does not meet the qualifications for permanent licensure, but is held in high esteem for unique contributions the individual has made to medicine and will make by practicing in Iowa. The license is not designed for physicians in regular faculty positions that could be filled by a physician qualified for permanent licensure in Iowa or for the purpose of training the physician who receives the license, i.e., participating in a fellowship of any kind. The board will consider granting and renewing a special license on a case-by-case basis.

b. A special license may be issued for a period of not more than one year and may be renewed annually prior to expiration. The number of renewals granted by the board is not limited. The renewal of any special license granted for the first time after July 1, 2001, shall be limited to those physicians who continue to meet the requirements of paragraph *"a"* of this subrule and subrule 10.4(5). Academic

institutions are encouraged to assist special licensees in qualifying for permanent licensure if the physician is to remain in Iowa long term.

c. A special license shall specifically limit the licensee to practice at the medical college and at any health care facility affiliated with the medical college.

d. A special license shall automatically be placed on inactive status when the licensee discontinues service on the academic medical staff for which the special license was granted.

e. The board may cancel a special license if the licensee has practiced outside the scope of this license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55, 148.6, and 272C.10 and 653—Chapter 23. When cancellation of such a license is proposed, the board shall promptly notify the licensee by sending a statement of charges and notice of hearing by certified mail to the last-known address of the licensee. This contested case proceeding shall be governed by the provisions of 653—Chapter 25.

f. A special physician licensee shall notify the board of any change in home address or the address of the place of practice within one month of making an address change.

g. A special physician licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

h. A special physician licensee file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate.

i. The board shall accept each 12 months of practice as a special licensee as equivalent to one year of postgraduate training in a hospital-affiliated program approved by the board for the purposes of permanent licensure.

10.4(2) *Special license eligibility.* To be eligible for a special license, an applicant shall meet all of the following requirements:

a. Fulfill the application requirements specified in subrule 10.4(3);

b. Be at least 21 years of age;

c. Be a physician in a medical specialty;

d. Present evidence of holding a medical degree from an educational institution that is located in a jurisdiction outside the United States or Canada and that is listed in the Directory of Medical Schools published by the International Medical Education Directory;

e. Have completed at least two years of postgraduate education in any jurisdiction;

f. Have practiced for five years after postgraduate education;

g. Demonstrate English proficiency as set forth in subparagraph 10.4(3)*"a"*(4); and

h. Be licensed in a jurisdiction outside the United States or Canada and present evidence that any licenses held in any jurisdiction are unrestricted.

10.4(3) *Special license application.*

a. *Requirements.* To apply for a special license an applicant shall:

(1) Pay a nonrefundable special license fee of $300 plus the $45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks;

(2) Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant;

(3) Provide verification of successful completion of a medical degree;

(4) Demonstrate proficiency in English by providing a valid ECFMG certificate or verification of a passing score on the TSE, the Test of Spoken English, or TOEFL, the Test of English as a Foreign Language, examinations administered by the Educational Testing Service. A passing score on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), a minimum overall score of 213 on the computer-administered TOEFL, or a minimum overall score of 79 on the Internet-based examination;

(5) Present a letter from the dean of the medical college in which the applicant will be practicing that indicates all of the following:

1. The applicant has been invited to serve on the academic staff of the medical school and in what capacity;

2. The applicant's qualifications and the unique contributions the applicant has made to the practice of medicine;

3. The unique contributions the applicant is expected to make by practicing in Iowa and how these contributions will serve the public interest of Iowans; and

(6) Present at least two letters of recommendation from universities, other educational institutions, or research facilities that indicate the applicant's noteworthy professional attainment.

b. *Application.* The application shall request the following information:

(1) Name, date and place of birth, home address, and mailing address;

(2) A photograph of the applicant suitable for positive identification;

(3) A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance;

(4) A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;

(5) A photocopy of the applicant's medical degree issued by an educational institution and a sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. A complete translation of any diploma not written in English shall be submitted;

(6) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(7) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;

(8) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

(9) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; and

(10) A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

10.4(4) *Special license application review process.* The process below shall be utilized to review each application for a special license.

a. An application shall be considered open from the date the application form is received in the board office with the nonrefundable special licensure fee.

b. After reviewing each application, staff shall notify the applicant or the applicant's academic institution about how to resolve any problems identified by the reviewer. The applicant shall provide additional information when requested by staff or the board.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may administratively grant a special license.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, director of licensure and administration, and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall administratively grant a special license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, substance abuse, questionable competency, physical or mental illness, or educational disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively a special license.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request that the applicant appear for an interview;

(2) Grant a special license for practice at the medical college designated in the application;

(3) Grant a license under certain terms and conditions or with certain restrictions;

(4) Request that the applicant withdraw the licensure application; or

(5) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request that the applicant appear for an interview;

(2) Grant a special license for practice at the medical college designated in the application;

(3) Grant a license under certain terms and conditions or with certain restrictions;

(4) Request that the applicant withdraw the licensure application; or

(5) Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in 653—9.15(147,148).

10.4(5) *Special license application cycle.* If the applicant does not submit all materials within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

10.4(6) *Renewal of a special license.*

a. If the special physician licensee has not qualified for and received a permanent license, the board shall send a courtesy renewal notice by regular mail to the licensee's last-known address at least 60 days prior to the expiration date of the special physician license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

b. A special physician licensee shall apply for a one-year renewal by submitting the following:

(1) A completed renewal application;

(2) The renewal fee of $200; and

(3) Evidence of continuing education and training on chronic pain management, end-of-life care, and identifying and reporting abuse.

1. The requirement for continuing education is 20 hours of category 1 credit as specified in 653—Chapter 11.

2. The requirement for training on chronic pain management, end-of-life care, and identifying and reporting abuse is specified in 653—Chapter 11.

The dean of the medical college shall submit a letter that addresses the individual's unique contribution to the practice of medicine in Iowa, how the anticipated contribution will serve the public interest of Iowans, and the need for renewal of this license. For a licensee who received the initial special license prior to July 1, 2001, the only statement needed from the dean is verification of the academic appointment the licensee continues to hold.

c. Failure of the licensee to renew a license within one month of the expiration date shall cause the license to become inactive. A licensee whose license is inactive is prohibited from practice until a new special license is granted according to subrules 10.4(3) and 10.4(4).

[**ARC 0216C**, IAB 7/25/12, effective 8/29/12; **ARC 1187C**, IAB 11/27/13, effective 1/1/14]

653—10.5(147,148) Temporary licensure. The board may issue a temporary license authorizing a physician to participate in a board-approved activity in Iowa. Temporary licensure is granted on a case-by-case basis and depends upon the applicant's education and training, experience and licensure status elsewhere and upon the intended use of the temporary license.

10.5(1) *General provisions.*

a. The temporary license to practice is intended for a physician to participate in a board-approved activity, as defined in rule 653—10.1(147,148), in Iowa that is short-term. Temporary licensure is not intended to be a way for a physician to practice before a permanent license is granted. Temporary licensure is not intended for locum tenens.

b. The board may issue a temporary license authorizing the physician to practice in a board-approved activity. The license may be restricted to the board-approved activity, location(s) or time period of up to one year.

(1) A physician who is granted a temporary license for a board-approved activity may qualify for renewal of that license if the physician needs an extension of the license for the original purpose or to pursue more than one board-approved activity within a year.

(2) A physician who wishes to continue in a board-approved activity in Iowa for short intervals beyond one year is eligible for a temporary license each year after reapplying and qualifying on an annual basis.

c. A physician incidentally called into this state in consultation with a physician and surgeon licensed in this state, as defined in rule 653—10.1(147,148), is not required to obtain a temporary license in Iowa.

d. A physician who seeks to practice in Iowa and does not qualify for a temporary license may be eligible for permanent licensure under 653—Chapter 9.

e. The board may take disciplinary action on a temporary license if the licensee has practiced outside the scope of the temporary license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55, 148.6, and 272C.10 and 653—Chapter 23. Contested case proceedings shall be governed by the provisions of 653—Chapter 25.

f. A physician who holds a temporary license shall notify the board of any change in address within three days of making an address change.

g. A physician who holds a temporary license shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

h. The file of a physician who holds a temporary license shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate.

10.5(2) *Eligibility for a temporary license.* To be eligible for a temporary license, an applicant shall meet all of the following requirements:

a. Fulfill the requirements specified in subrules 10.5(3) and 10.5(4);

b. Be at least 21 years of age;

c. Hold a medical degree from an educational institution approved by the board (if the applicant is an international medical graduate, the educational institution must be listed in the International Medical Education Directory);

d. Hold a current active, unrestricted license to practice medicine issued by any jurisdiction;

e. Be fluent in the English language;

f. Present a letter justifying the need for temporary licensure from the organization or individual seeking the applicant's participation in a board-approved activity.

10.5(3) *Requirements for a temporary license.* To apply for a temporary license, an applicant shall complete the requirements in paragraphs *"a"* and *"b"*:

a. Pay a nonrefundable application fee of $100 plus the $45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). A physician who is serving as a camp physician and who is not receiving payment other than expenses shall be exempt from the license application fee and the fee for the criminal history background check.

b. Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

10.5(4) *Application.* The application shall require the following information:

a. The applicant's full legal name, date and place of birth, home address, mailing address and principal business address;

b. A photograph of the applicant suitable for positive identification;

c. A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including the applicant's license number and date of issuance of the license;

d. A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;

e. A statement by the applicant that discloses and explains any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

f. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;

g. A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

h. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant, filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

i. A statement from the applicant that justifies the need for a temporary license, including where the applicant intends to practice and the type of practice involved;

j. A letter from the Iowa organization or individual seeking the applicant's services that explains the need for the applicant's participation in the board-approved activity in Iowa, the time period involved, the scope of practice, and the exact location and facilities where the board-approved activity will occur;

k. For an international medical graduate who does not hold a license in good standing in any United States jurisdiction, a statement, which shall be submitted by the Iowa organization or individual offering the board-approved activity, identifying who the applicant's immediate supervisor will be;

l. For an international medical graduate who does not hold a license in good standing in any United States jurisdiction:

(1) Verification, which shall be submitted from the licensing authority of the country in which the physician is licensed, that the physician has a license in good standing;

(2) Evidence of fluency in the English language;

m. For a resident physician who does not hold a current, active resident or permanent license in the home state of the resident training program, a statement, which shall be submitted by the resident director or individual offering the board-approved activity, identifying who the applicant's immediate supervisor will be.

n. A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

10.5(5) *Standard application review process for a temporary license.* The standard review process shall be utilized to review each application for a temporary license, except that the process identified in subrule 10.5(6) shall be used for any international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or for any physician who seeks temporary licensure for an activity not listed in paragraphs "1" through "6" of the definition of "board-approved activity" in rule 653—10.1(147,148). The standard application review process is as follows:

a. An application shall be considered open from the date the application form and the nonrefundable fees are received in the board office.

b. After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for temporary licensure or the need for a temporary licensee, staff may administratively grant a temporary

license to the applicant for a specific activity, location(s) or specified duration based on the nature of the board-approved activity. The license shall not be granted for a period longer than one year.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, then the executive director, the director of licensure and administration, and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for temporary licensure or the organization's or requesting individual's need for a licensee with a temporary license.

(1) If there is no current concern, staff shall administratively grant a temporary license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters that include, but are not limited to, falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, educational disciplinary history, or questionable need on the part of the organization.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to administratively grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;

(2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Deny a temporary license; or

(4) Request that the applicant withdraw the temporary licensure application.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;

(2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Request that the applicant withdraw the temporary licensure application. The request shall not imply that the applicant is ineligible for permanent licensure if that application process is pursued; or

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.17(147,148).

10.5(6) *Application review process for applicants with certain exceptions.* This application process shall be used to review applications submitted by an international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or by a physician seeking temporary licensure for an activity not listed in paragraphs "1" through "6" of the definition of "board-approved activity" in rule 653—10.1(147,148). Following is the application review process for applicants with exceptions:

a. An application shall be considered open from the date the application form and the nonrefundable fees are received in the board office.

b. After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for temporary licensure or the need for a temporary license, staff shall submit the application to the committee for review and recommendation to the board about whether to grant a temporary license to the physician and whether the license should be granted for a specific activity, location(s) or specified duration based on the nature of the board-approved activity.

d. The board shall consider applications and recommendations from the committee and shall:

(1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;

(2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Request that the applicant withdraw the temporary licensure application. The request shall not imply that the applicant is ineligible for permanent licensure if that application process is pursued; or

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.17(147,148).

10.5(7) *Temporary license application cycle.* If the applicant does not submit all materials within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant whose application is inactive must reapply and submit new nonrefundable fees and a new application, documents and credentials if the applicant wishes to pursue temporary licensure.

10.5(8) *Renewal of a temporary license.*

a. When the temporary license is granted, the board shall inform the licensee that the license may be renewed within the year, if the same need for a temporary license continues. The board shall not send a notice of renewal.

b. To apply for renewal of a temporary license, the licensee shall submit the following:

(1) A request for renewal;

(2) The renewal fee of $50; and

(3) Written justification for the renewal from the organization or individual seeking the applicant.

Failure of the licensee to renew a license by the expiration date shall cause the license to become inactive. The individual shall not practice in Iowa until securing a permanent medical license or until becoming eligible for a second temporary license.

[**ARC 0216C**, IAB 7/25/12, effective 8/29/12; **ARC 1187C**, IAB 11/27/13, effective 1/1/14]

653—10.6(17A,147,148,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 3/14/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 6/5/02]
[Filed 6/6/02, Notice 5/1/02—published 6/26/02, effective 7/31/02]
[Filed 10/10/02, Notice 7/10/02—published 10/30/02, effective 12/4/02]
[Filed emergency 2/7/03 after Notice 1/8/03—published 3/5/03, effective 2/7/03]
[Filed 12/4/03, Notice 10/15/03—published 12/24/03, effective 1/28/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 6/17/05, Notice 5/11/05—published 7/6/05, effective 8/10/05]
[Filed emergency 8/30/05 after Notice 7/6/05—published 9/28/05, effective 10/1/05]
[Filed 10/12/06, Notice 8/2/06—published 11/8/06, effective 1/1/07]
[Filed 12/14/06, Notice 11/8/06—published 1/17/07, effective 2/21/07]◊
[Filed emergency 2/8/07 after Notice 1/3/07—published 2/28/07, effective 3/1/07]
[Filed emergency 11/21/07 after Notice 10/10/07—published 12/19/07, effective 1/1/08]
[Filed 4/3/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]
[Filed 7/24/08, Notice 6/18/08—published 8/13/08, effective 9/17/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]
[Filed ARC 0216C (Notice ARC 0091C, IAB 4/18/12), IAB 7/25/12, effective 8/29/12]
[Filed ARC 1187C (Notice ARC 0943C, IAB 8/7/13), IAB 11/27/13, effective 1/1/14]

◊ Two or more ARCs

CHAPTER 11
CONTINUING EDUCATION AND TRAINING REQUIREMENTS

[Prior to 5/4/88, see 470—135.101 to 470—135.110 and 135.501 to 135.512]

653—11.1(272C) Definitions.

"ABMS" means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

"Accredited provider" means an organization approved as a provider of category 1 credit by one of the following board-approved accrediting bodies: Accreditation Council for Continuing Medical Education, Iowa Medical Society, or the Council on Continuing Medical Education of the AOA.

"Active duty" means full-time training or active service in the U.S. armed forces, reserves or national guard.

"Active licensee" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in Iowa who has met all conditions of licensure and maintains a current license to practice in Iowa.

"AMA" means the American Medical Association, a professional organization of physicians and surgeons.

"AOA" means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

"Approved abuse education training program" means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

"Approved program or credit" means any category 1 credit offered by an accredited provider or any other program or credit meeting the standards set forth in these rules.

"Board" means the Iowa board of medicine.

"Carryover" means hours of category 1 credit earned in excess of the required hours in a license period that may be applied to the continuing education requirement in the subsequent license period; carryover may not exceed 20 hours of category 1 credit per renewal cycle.

"Category 1 credit" means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of the AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

"Committee" means the licensure committee of the board.

"COMVEX-USA" means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America. The National Board of Osteopathic Medical Examiners prepares the examination and determines its passing score. A licensing authority in any jurisdiction administers the examination. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

"Continuing education" means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at or completion of an approved category 1 credit.

"Inactive license" means any license that is not a current, active license. Inactive license may include licenses formerly known as delinquent, lapsed, or retired. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated.

"Licensee" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in the state of Iowa.

"Opioid" means any FDA-approved product or active pharmaceutical ingredient classified as a controlled substance that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

"SPEX" means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction. The passing score on SPEX is 75.

"Training for chronic pain management" means required training on chronic pain management identified in 653—Chapter 11.

"Training for end-of-life care" means required training on end-of-life care identified in 653—Chapter 11.

"Training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on reporting of child abuse and the training requirements are in Iowa Code section 232.69; the full requirements on reporting of dependent adult abuse and the training requirements are in Iowa Code section 235B.16.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11; **ARC 0217C**, IAB 7/25/12, effective 8/29/12; **ARC 0871C**, IAB 7/24/13, effective 8/28/13; **ARC 4338C**, IAB 3/13/19, effective 4/17/19]

653—11.2(272C) Continuing education credit and alternatives.

11.2(1) Continuing education credit may be obtained by attending category 1 credits as defined in this chapter.

11.2(2) The board shall accept the following as equivalent to 50 hours of category 1 credit: participation in an approved resident training program or board certification or recertification by an ABMS or AOA specialty board within the licensing period.

11.2(3) The board shall in January of each year recognize the equivalent of up to 10 hours of category 1 credits for physicians who actively served as members or alternate members of the Iowa board of medicine during the previous year; for physicians who actively served as members of the Iowa physician health committee during the previous year; and for physicians who performed peer reviews for the board during the previous year. The physicians receiving recognition of category 1 credit equivalents will be notified by U.S. mail in January by the executive director of the board.

[**ARC 0217C**, IAB 7/25/12, effective 8/29/12]

653—11.3(272C) Accreditation of providers. The board approves the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, and the Council on Continuing Medical Education of the AOA as organizations acceptable to accredit providers of category 1 credits.

[**ARC 0217C**, IAB 7/25/12, effective 8/29/12]

653—11.4(272C) Continuing education and training requirements for renewal or reinstatement. A licensee shall meet the requirements in this rule to qualify for renewal of a permanent license, an

administrative medicine license, or special license or to qualify for reinstatement of a permanent license or an administrative medicine license.

11.4(1) *Continuing education and training requirements.*

a. Continuing education for permanent license or administrative medicine license renewal. Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 credit, on the renewal application.

b. Continuing education for special license renewal. A total of 20 hours of category 1 credit shall be required for annual renewal of a special license. No carryover hours are allowed.

c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal. The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children in Iowa must complete at least two hours of training in child abuse identification and reporting every five years. "A licensee who regularly provides primary health care to children" means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults in Iowa must complete at least two hours of training in dependent adult abuse identification and reporting every five years. "A licensee who regularly provides primary health care to adults" means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)*"c"*(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. "A licensee who regularly provides primary health care to children and adults" means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

d. Training for chronic pain management for permanent or special license renewal. The licensee shall complete the training for chronic pain management as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) A licensee who has prescribed opioids to a patient during the previous license period must complete at least two hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, every five years. A licensee may attest as part of the license renewal process that the licensee is not subject to the requirement to receive continuing medical education credits pursuant to this paragraph, due to the fact that the licensee did not prescribe opioids to a patient during the previous licensure cycle.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the chronic pain management training and shall then complete the training once every five years thereafter.

e. Training for end-of-life care for permanent or special license renewal. The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)*"a."*

(1) A licensee who regularly provides direct patient care to actively dying patients in Iowa must complete at least two hours of category 1 credit for end-of-life care every five years.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the end-of-life care training and shall then complete the training once every five years thereafter.

11.4(2) *Exemptions from renewal requirements.*

a. A licensee shall be exempt from the continuing education requirements in subrule 11.4(1) when, upon license renewal, the licensee provides evidence for:

(1) Periods that the licensee served honorably on active duty in the U.S. armed forces, reserves or national guard;

(2) Periods that the licensee practiced in another state or district and did not provide medical care, including telemedicine services, to patients located in Iowa, if the other state or district had continuing education requirements for the profession and the licensee met all requirements of that state or district for practice therein;

(3) Periods that the licensee was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

(4) Other periods of active practice and absence from the state approved by the board.

b. The requirements for training on identifying and reporting abuse, chronic pain management and end-of-life care for license renewal shall be suspended for a licensee who provides evidence for:

(1) Periods described in subparagraph 11.4(2)*"a"*(1), (2), (3), or (4); or

(2) Periods that the licensee resided outside of Iowa and did not practice in Iowa.

11.4(3) *Extension for completion of or exemption from renewal requirements.* The board may, in individual cases involving physical disability or illness, grant an extension of time for completion of, or an exemption from, the renewal requirements in subrule 11.4(1).

a. A licensee requesting an extension or exemption shall complete and submit a request form to the board that sets forth the reasons for the request and has been signed by the licensee and attending physician.

b. The board may grant an extension of time to fulfill the requirements in subrule 11.4(1).

c. The board may grant an exemption from the educational requirements for any period of time not to exceed one calendar year.

d. If the physical disability or illness for which an extension or exemption was granted continues beyond the period of waiver, the licensee must reapply for a continuance of the extension or exemption.

e. The board may, as a condition of any extension or exemption granted, require the applicant to make up a portion of the continuing education requirement by methods it prescribes.

11.4(4) *Reinstatement requirement.* An applicant for license reinstatement whose license has been inactive for one year or more shall provide proof of successful completion of 40 hours of category 1 credit completed within 24 months prior to submission of the application for reinstatement or proof of successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

11.4(5) *Cost of continuing education and training for renewal or reinstatement.* Each licensee is responsible for all costs of continuing education and training required in 653—Chapter 11.

11.4(6) *Documentation.* A licensee shall maintain documentation of the continuing education and training requirements in 653—Chapter 11, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the continuing education and training.

11.4(7) *Audits.* The board may audit continuing education and training documentation at any time within the five-year period. If the board conducts an audit of continuing education and training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

11.4(8) *Grounds for discipline.* A licensee may be subject to disciplinary action for failure to comply with continuing education and training requirements in 653—Chapter 11.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11; **ARC 0217C**, IAB 7/25/12, effective 8/29/12; **ARC 0871C**, IAB 7/24/13, effective 8/28/13; **ARC 2523C**, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter; **ARC 4338C**, IAB 3/13/19, effective 4/17/19]

653—11.5(272C) Failure to fulfill requirements for continuing education and training for identifying and reporting abuse.

11.5(1) Disagreement over whether material submitted fulfills the requirements specified in rule 653—11.4(272C).

a. Staff will attempt to work with a licensee or applicant to resolve any discrepancy concerning credit for renewal or reinstatement.

b. When resolution is not possible, staff shall refer the matter to the committee.

(1) In the matter of a licensee seeking license renewal, staff shall renew the license if all other matters are in order and inform the licensee that the matter is being referred to the committee.

(2) In the matter of an applicant seeking reinstatement, staff shall reinstate the license if all other matters are in order and inform the applicant that the matter is being referred to the committee.

c. The committee shall consider the staff's recommendation for denial of credit for continuing education or training for identifying and reporting abuse, chronic pain management, and end-of-life care.

(1) If the committee approves the credit, it shall authorize the staff to inform the licensee or applicant that the matter is resolved.

(2) If the committee disapproves the credit, it shall refer the matter to the board with a recommendation for resolution.

d. The board shall consider the committee's recommendations.

(1) If the board approves the credit, it shall authorize the staff to notify the licensee or applicant for reinstatement if all other matters are in order.

(2) If the board denies the credit, it shall:

1. Close the case;

2. Send the licensee or applicant an informal, nonpublic letter of warning, which may include recommended terms for complying with the requirements for continuing education or training; or

3. File a statement of charges for noncompliance with the board's rules on continuing education or training and for any other violations which may exist.

11.5(2) Informal appearance for failure to complete requirements for continuing education or training.

a. The licensee or applicant may, within ten days after the date that the notification of the denial was sent by certified mail, request an informal appearance before the board.

b. At the informal appearance, the licensee or applicant will have the opportunity to present information, and the board will issue a written decision.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11; **ARC 0217C**, IAB 7/25/12, effective 8/29/12]

653—11.6(17A,147,148E,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 147 and 272C and sections 232.69 and 235B.16.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed 2/27/81, Notice 1/7/81—published 3/18/81, effective 4/22/81]
[Filed 4/9/82, Notice 2/3/82—published 4/28/82, effective 6/2/82]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 11/5/82, Notice 9/29/82—published 11/24/82, effective 12/29/82]

[Filed emergency after Notice 4/28/83, Notice 2/2/83—published 5/25/83, effective 4/28/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]
[Filed emergency 3/8/85—published 3/27/85, effective 3/8/85]
[Filed emergency 8/9/85—published 8/28/85, effective 8/9/85]
[Filed 5/30/86, Notice 3/26/86—published 6/18/86, effective 7/23/86]
[Filed emergency 7/25/86—published 8/13/86, effective 7/25/86]
[Filed 9/3/86, Notice 7/16/86—published 9/24/86, effective 10/29/86]
[Filed 10/1/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 9/2/87, Notice 7/29/87—published 9/23/87, effective 10/28/87]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/25/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 6/6/90]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 1/2/91, Notice 11/14/90—published 1/23/91, effective 2/27/91]
[Filed 6/7/91, Notice 5/1/91—published 6/26/91, effective 7/31/91]
[Filed 4/24/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 1/10/94, Notice 11/24/93—published 2/2/94, effective 3/9/94]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 10/4/96, Notice 4/24/96—published 10/23/96, effective 11/27/96]
[Filed 12/13/96, Notice 10/23/96—published 1/1/97, effective 2/5/97]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 12/1/97, Notice 9/24/97—published 12/17/97, effective 1/21/98]
[Filed 6/12/98, Notice 4/8/98—published 7/1/98, effective 8/5/98]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed emergency 12/8/99 after Notice 11/3/99—published 12/29/99, effective 12/8/99]
[Filed 11/28/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 2/14/02, Notice 11/28/01—published 3/6/02, effective 4/10/02]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 6/5/02]
[Filed 6/6/02, Notice 5/1/02—published 6/26/02, effective 7/31/02]
[Filed 12/14/06, Notice 11/8/06—published 1/17/07, effective 2/21/07]
[Filed emergency 2/8/07 after Notice 1/3/07—published 2/28/07, effective 3/1/07]
[Filed 7/24/08, Notice 6/18/08—published 8/13/08, effective 9/17/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]
[Filed ARC 9601B (Notice ARC 9413B, IAB 3/9/11), IAB 7/13/11, effective 8/17/11]
[Filed ARC 0217C (Notice ARC 0092C, IAB 4/18/12), IAB 7/25/12, effective 8/29/12]
[Filed ARC 0871C (Notice ARC 0697C, IAB 5/1/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 2523C (Notice ARC 2359C, IAB 1/6/16), IAB 5/11/16, effective 6/15/16]
[Rescinded paragraph editorially removed, IAC Supplement 10/24/18][1]
[Filed ARC 4338C (Notice ARC 4204C, IAB 1/2/19), IAB 3/13/19, effective 4/17/19]

[1] Paragraph 11.4(1)"d" rescinded by 2018 Iowa Acts, House File 2377, section 23, effective 7/1/18.

CHAPTER 12
NONPAYMENT OF STATE DEBT

653—12.1(272D) Definitions. For the purpose of this chapter, the following definitions shall apply.

"Act" means Iowa Code sections 272D.1 to 272D.9.

"Applicant" means an individual who is seeking the issuance of a license.

"Board" means the board of medicine.

"Centralized collection unit" means the centralized collection unit of the Iowa department of revenue.

"Certificate of noncompliance" means a document known as a certificate of noncompliance which is provided by the centralized collection unit of the department of revenue certifying that the named applicant or licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by the Act.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

"Withdrawal certificate" means a document provided by the centralized collection unit certifying that the certificate of noncompliance is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

[**ARC 8353B**, IAB 12/2/09, effective 1/6/10]

653—12.2(272D) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the centralized collection unit. This rule shall apply in addition to the procedures set forth in the Act.

12.2(1) *Service of denial notice.* Notice shall be served upon the applicant or licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

12.2(2) *Effective date of denial.* The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the applicant or licensee.

12.2(3) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the denial notice upon the applicant or licensee.

12.2(4) *Licensees and applicants responsible to inform board.* Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and withdrawals of certificates issued by the centralized collection unit.

12.2(5) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

12.2(6) *Effect of filing in district court.* In the event an applicant or a licensee files a timely district court action following service of a board denial notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.2(7) *Final notification.* The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the board's receipt of a withdrawal certificate.

[**ARC 8353B**, IAB 12/2/09, effective 1/6/10]

653—12.3(272D) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

12.3(1) *Service of revocation or suspension notice.* A revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

12.3(2) *Effective date of revocation or suspension.* The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

12.3(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

12.3(4) *Licensee responsible to inform board.* The licensee shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the centralized collection unit.

12.3(5) *Reinstatement following license suspension or revocation.* A licensee shall pay all board fees required for license renewal or license reinstatement before a license will be reinstated after the board has suspended or revoked a license pursuant to the Act.

12.3(6) *Effect of filing in district court.* In the event a licensee files a timely district court action pursuant to the Act, and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension 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 license suspension or revocation, 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.

12.3(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal certificate.

[**ARC 8353B**, IAB 12/2/09, effective 1/6/10]

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

[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

[Filed ARC 8353B (Notice ARC 8191B, IAB 10/7/09), IAB 12/2/09, effective 1/6/10]

CHAPTER 13
STANDARDS OF PRACTICE AND PRINCIPLES OF MEDICAL ETHICS

[Prior to 5/4/88, see 470—135.251 to 470—135.402]

653—13.1(148,272C) Standards of practice—packaging, labeling and records of prescription drugs dispensed by a physician.

13.1(1) A physician shall dispense a prescription drug only in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471-1476 (2001), unless otherwise requested by the patient, and of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. ss. 301 et seq. (2001).

13.1(2) A label shall be affixed to a container in which a prescription drug is dispensed by a physician which shall include:

1. The name and address of the physician.
2. The name of the patient.
3. The date dispensed.
4. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician.
5. The name and strength of the prescription drug in the container.

13.1(3) The provisions of subrules 13.1(1) and 13.1(2) shall not apply to packaged drug samples.

13.1(4) A physician shall keep a record of all prescription drugs dispensed by the physician to a patient which shall contain the information required by subrule 13.1(2) to be included on the label. Noting such information on the patient's chart or record maintained by the physician is sufficient.

This rule is intended to implement Iowa Code sections 147.55, 148.6, 272C.3 and 272C.4.

653—13.2(124,148,272C) Standards of practice—appropriate pain management. This rule establishes standards of practice for the management of acute and chronic pain. The board encourages the use of nonopioid pharmacologic therapy and nonpharmacologic therapy, including but not limited to adjunct therapies such as acupuncture, physical therapy and massage, osteopathic manipulative therapy and occupational therapy in the treatment of acute and chronic pain.

1. This rule is intended to encourage appropriate pain management, including the use of opioids for the treatment of pain, while stressing the need to establish safeguards to minimize the potential for substance abuse and drug diversion.
2. The goal of pain management is to treat each patient's pain in relation to the patient's overall health, including physical function and psychological, social and work-related factors. At the end of life, the goals may shift to palliative care.
3. The board recognizes that pain management is an important part of medical practice. Unmanaged or inappropriately treated pain impacts patients' quality of life, reduces patients' ability to be productive members of society, and increases patients' use of health care services.
4. Physicians should not fear board action for treating pain with opioids as long as the physicians' prescribing is consistent with appropriate pain management practices. Dosage alone is not the sole measure of determining whether a physician has complied with appropriate pain management practices. The board recognizes the complexity of treating patients with chronic pain or a substance abuse history. Generally, the board is concerned about a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain.
5. Inappropriate pain management is a departure from the acceptable standard of practice in Iowa and may be grounds for disciplinary action.

13.2(1) *Definitions.* For the purposes of this rule, the following terms are defined as follows:

"Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. Generally, acute pain is self-limited, lasting no more than a few weeks following the initial stimulus.

"Addiction" means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors

that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

"Chronic pain" means pain that typically lasts longer than three months or past the time of normal tissue healing. Chronic pain can be the result of an underlying medical disease or condition, injury, medical treatment, inflammation, or an unknown cause.

"Opioid" means any U.S. Food and Drug Administration (FDA)-approved product or active pharmaceutical ingredient classified as a controlled substance that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

"Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Pain is an individual, multifactorial experience influenced by culture, previous pain events, beliefs, mood and ability to cope.

"Physical dependence" means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

"Pseudoaddiction" means an iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve upon institution of effective analgesic therapy.

"Substance abuse" means the use of a drug, including alcohol, by the patient in an inappropriate manner that may cause harm to the patient or others, or the use of a drug for an indication other than that intended by the prescribing clinician. An abuser may or may not be physically dependent on or addicted to the drug.

"Tolerance" means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

"Undertreatment of pain" means the failure to properly assess, treat and manage pain or the failure to appropriately document a sound rationale for not treating pain.

13.2(2) *Laws and regulations.* Nothing in this rule relieves a physician from fully complying with applicable federal and state laws and regulations.

13.2(3) *Undertreatment of pain.* The undertreatment of pain is a departure from the acceptable standard of practice in Iowa. Undertreatment may include a failure to recognize symptoms and signs of pain, a failure to treat pain within a reasonable amount of time, a failure to allow interventions, e.g., analgesia, to become effective before invasive steps are taken, a failure to address pain needs in patients with reduced cognitive status, a failure to use opioids for terminal pain due to the physician's concern with addicting the patient, or a failure to use an adequate level of pain management.

13.2(4) *Assessment and treatment of acute and chronic pain.* Appropriate assessment of the etiology of the pain is essential to the appropriate treatment of acute and chronic pain.

a. Prescribing opioids for the treatment of acute and chronic pain should be based on clearly diagnosed and documented pain. Appropriate management of acute and chronic pain should include an assessment of the mechanism, type and intensity of pain. The patient's medical record should clearly document a medical history, a pain history, a clinical examination, a medical diagnosis and a treatment plan.

b. Prescribing opioids for the treatment of acute and chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain.

c. On March 15, 2016, the U.S. Centers for Disease Control and Prevention (CDC) issued the CDC Guideline for Prescribing Opioids for Chronic Pain to provide recommendations for the prescribing of opioid pain medication for patients 18 years of age and older in primary care settings. Recommendations focus on the use of opioids in treating chronic pain (pain lasting longer than three months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care. A

physician who prescribes, dispenses or administers opioids to patients for the treatment of chronic pain should become familiar with the CDC Guideline for Prescribing Opioids for Chronic Pain.

13.2(5) *Effective management of chronic pain.* To ensure that chronic pain is properly assessed and treated, a physician who prescribes, dispenses or administers opioids to a patient for the treatment of chronic pain shall exercise sound clinical judgment and establish an effective pain management plan in accordance with the following:

a. Patient evaluation. A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain may be warranted depending upon the expertise of the physician and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

b. Treatment plan. The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive prescriptions for opioids from a single physician and a single pharmacy whenever possible.

c. Informed consent. The physician shall document discussion of the risks and benefits of opioids with the patient or person representing the patient.

d. Periodic review. The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. The physician should adjust drug therapy to the individual needs of each patient. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate that the objectives of the treatment plan are not being met or that there is evidence of diversion or a pattern of substance abuse. Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.

e. Consultation/referral. A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, and other consultation may be appropriate. The physician should also consider consultation with, or referral to, a physician with expertise in addiction medicine or substance abuse counseling, if there is evidence of diversion or a pattern of substance abuse. The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.

f. Documentation. The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

g. Pain management agreements. A physician who treats patients for chronic pain with opioids shall consider using a pain management agreement with each patient being treated that specifies the rules for medication use and the consequences for misuse. In determining whether to use a pain management agreement, a physician shall evaluate each patient, taking into account the risks to the patient and the potential benefits of long-term treatment with opioids. A physician who prescribes opioids to a patient for more than 90 days for the treatment of chronic pain shall utilize a pain management agreement if the physician has reason to believe a patient is at risk of drug abuse or diversion. If a physician prescribes opioids to a patient for more than 90 days for the treatment of chronic pain and chooses not to use a pain management agreement, then the physician shall document in the patient's medical records the reason(s) why a pain management agreement was not used. Use of pain management agreements is not necessary for hospice or nursing home patients. Sample pain management agreement and prescription drug risk assessment tools may be found on the board's website at www.medicalboard.iowa.gov.

h. Substance abuse history or comorbid psychiatric disorder. A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

i. Drug testing. A physician who prescribes opioids to a patient for more than 90 days for the treatment of chronic pain shall consider utilizing drug testing to ensure that the patient is receiving appropriate therapeutic levels of prescribed medications or if the physician has reason to believe that the patient is at risk of drug abuse or diversion.

j. Termination of care. The physician shall consider termination of patient care if there is evidence of noncompliance with the rules for medication use, drug diversion, or a repeated pattern of substance abuse.

13.2(6) *Pain management for terminal illness.* The provisions of this subrule apply to patients who are at the stage in the progression of cancer or other terminal illness when the goal of pain management is comfort care. When the goal of treatment shifts to comfort care rather than cure of the underlying condition, the board recognizes that the dosage level of opioids to control pain may exceed dosages recommended for chronic pain and may come at the expense of patient function. The determination of such pain management should involve the patient, if possible, and others the patient has designated for assisting in end-of-life care.

13.2(7) *Prescription monitoring program.* The Iowa board of pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist prescribers and pharmacists in monitoring the prescription of controlled substances to patients. A physician shall register for the prescription monitoring program at the same time the physician applies for registration or renews registration to prescribe controlled substances as required by the Iowa board of pharmacy. A physician or the physician's designated agent shall utilize the prescription monitoring program prior to issuing an opioid prescription to assist the physician in determining appropriate treatment options and to improve the quality of patient care. A physician is not required to utilize the prescription monitoring program to assist in the treatment of a patient receiving inpatient hospice care or long-term residential facility patient care. An order issued in an inpatient hospital setting is not considered a prescription for the purposes of these rules. Patient safety is adequately protected in an inpatient hospital setting, and physicians caring for patients in an inpatient hospital setting do not prescribe. A link to the prescription monitoring program may be found at the board's website at www.medicalboard.iowa.gov.

13.2(8) *Electronic prescriptions.* Beginning January 1, 2020, all prescriptions (controlled and noncontrolled substances) shall be transmitted electronically as electronic prescriptions pursuant to Iowa Code section 124.308. A prescription shall be transmitted to a pharmacy by the physician or the physician's authorized agent in compliance with federal law and regulation for electronic prescriptions of controlled substances.

13.2(9) *Pain management resources.* The board strongly recommends that physicians consult the following resources regarding the proper treatment of chronic pain. This list is provided for the

convenience of licensees, and the publications included are not intended to be incorporated in the rule by reference.

a. American Academy of Hospice and Palliative Medicine or AAHPM is the American Medical Association-recognized specialty society of physicians who practice in hospice and palliative medicine in the United States. The mission of the AAHPM is to enhance the treatment of pain at the end of life.

b. American Academy of Pain Medicine or AAPM is the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

c. American Pain Society or APS is the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

d. DEA Policy Statement: Dispensing Controlled Substances for the Treatment of Pain. On August 28, 2006, the Drug Enforcement Agency (DEA) issued a policy statement establishing guidelines for practitioners who dispense controlled substances for the treatment of pain. This policy statement may be helpful to practitioners who treat pain with controlled substances.

e. Interagency Guideline on Prescribing Opioids for Pain. Developed by the Washington State Agency Medical Directors' Group in collaboration with an expert advisory panel, actively practicing providers and public stakeholders, the guideline focuses on evidence-based treatment for chronic-pain patients. The guideline was published in 2007 and updated in 2015.

f. Responsible Opioid Prescribing: A Physician's Guide. In 2007, in collaboration with author Scott Fishman, M.D., the Federation of State Medical Boards' (FSMB) Research and Education Foundation published a book on responsible opioid prescribing based on the FSMB Model Policy for the Use of Controlled Substances for the Treatment of Pain.

g. World Health Organization: Pain Relief Ladder. Cancer pain relief and palliative care. Technical report series 804. Geneva: World Health Organization.

h. CDC Guideline for Prescribing Opioids for Chronic Pain. On March 15, 2016, the U.S. Centers for Disease Control and Prevention (CDC) issued a guideline to provide recommendations for the prescribing of opioid pain medication for patients 18 years of age and older in primary care settings. Recommendations focus on the use of opioids in treating chronic pain (pain lasting longer than three months or past the time of normal tissue healing) outside of active cancer treatment, palliative care, and end-of-life care.

13.2(10) *Grounds for discipline.* A physician may be subject to disciplinary action for violation of these rules, the rules found in 653—Chapter 23, or any of the following:

a. A physician who prescribes opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent physician in the state of Iowa acting in the same or similar circumstances.

b. A physician who knowingly fails to comply with the confidentiality requirements of Iowa Code section 124.553 or who delegates program information access to another individual except as provided in Iowa Code section 124.553.

c. A physician who knowingly fails to comply with other requirements of Iowa Code chapter 124.

13.2(11) *Unlawful access, disclosure, or use of information.* A person who intentionally or knowingly accesses, uses, or discloses information from the prescription monitoring program in violation of Iowa Code section 124.553, unless otherwise authorized by law, is guilty of a class "D" felony. This subrule shall not preclude a physician who requests and receives information from the prescription monitoring program consistent with the requirements of Iowa Code section 124.553 from otherwise lawfully providing that information to any other person for medical care purposes.

This rule is intended to implement Iowa Code chapters 124, 148 and 272C.

[**ARC 9599B**, IAB 7/13/11, effective 8/17/11; **ARC 2705C**, IAB 9/14/16, effective 10/19/16; **ARC 4714C**, IAB 10/23/19, effective 11/27/19]

653—13.3(147) Supervision of pharmacists who administer adult immunizations. Rescinded **ARC 1033C**, IAB 10/2/13, effective 11/6/13.

653—13.4(148) Supervision of pharmacists engaged in collaborative drug therapy management. A supervising physician may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist pursuant to the requirements of this rule. The physician is considered the supervisor and retains the ultimate responsibility for the care of the patient. The authorized pharmacist retains full responsibility for proper execution of pharmacy practice.

13.4(1) *Definitions.*

"Authorized pharmacist" means an Iowa-licensed pharmacist who meets the training requirements of the Iowa board of pharmacy (IBP) as specified in the drug therapy management criteria in 657—8.34(155A).

"Board" means the board of medicine of the state of Iowa.

"Collaborative drug therapy management" means participation by a physician and an authorized pharmacist in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"Collaborative practice" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a written community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and the hospital's clinic patients through a hospital practice protocol when the clinic and the pharmacist are under the direct authority of the hospital's P&T committee.

"Community practice protocol" means a written, executed agreement entered into voluntarily between a physician and an authorized pharmacist establishing drug therapy management for one or more of the physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 13.4(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

"Hospital pharmacist" means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between physicians and hospital pharmacists within a hospital and its clinics as developed and determined by its P&T committee. Such a protocol may apply to all physicians and hospital pharmacists at a hospital or the hospital's clinics under the direct authority of the hospital's P&T committee or only to those physicians and pharmacists who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 13.4(3).

"IBP" means the Iowa board of pharmacy.

"P&T committee" means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician's practice.

"Therapeutic interchange" means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

13.4(2) *Community practice protocol.*

a. A physician shall engage in collaborative drug therapy management with a pharmacist only under a written protocol that is identified by topic and has been submitted to the IBP or a committee authorized by the IBP. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

b. The community practice protocol shall include:

(1) The name, signature, date and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a particular patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal pharmacist shall be designated in the protocol.

(2) The name, signature, date and contact information for each physician who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for the physician to secure the patient's written consent. If the physician does not secure the patient's written consent, the pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the pharmacist to initiate communication with the physician, including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests and physical findings upon which the pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy protocol to be reviewed, updated and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the physician requires the pharmacist to provide and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame in which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or authorized pharmacist.

(17) A description of the mechanism for the pharmacist and physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least the patient's physician and one authorized pharmacist.

d. A collaborative drug therapy management protocol must be filed with the IBP, kept on file in the pharmacy and made available to the board or IBP upon request. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the IBP. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the IBP of changes in the protocol.

f. Patient consent for community practice protocols. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient needs to be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

13.4(3) *Hospital practice protocol.*

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by its hospital pharmacists in the hospital and its clinics. Hospital clinics are restricted to outpatient care clinics operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of physicians and pharmacists who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician, including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the protocol authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

This rule is intended to implement Iowa Code chapter 148.

653—13.5(147,148) Standards of practice—chelation therapy. Chelation therapy or disodium ethylene diamine tetra acetic acid (EDTA) may only be used for the treatment of heavy metal poisoning or in the clinical setting when a licensee experienced in clinical investigations conducts a carefully controlled clinical investigation of its effectiveness in treating other diseases or medical conditions under a research protocol that has been approved by an institutional review board of the University of Iowa or Des Moines University—Osteopathic Medical Center.

This rule is intended to implement Iowa Code chapters 147 and 148.

653—13.6(79GA,HF726) Standards of practice—automated dispensing systems. A physician who dispenses prescription drugs via an automated dispensing system or a dispensing system that employs technology may delegate nonjudgmental dispensing functions to staff assistants in the absence of a pharmacist or physician provided that the physician utilizes an internal quality control assurance plan that ensures that the medication dispensed is the medication that was prescribed. The physician shall be physically present to determine the accuracy and completeness of any medication that is reconstituted prior to dispensing.

13.6(1) An internal quality control assurance plan shall include the following elements:

a. The name of the physician responsible for the internal quality assurance plan and testing;

b. Methods that the dispensing system employs, e.g., bar coding, to ensure the accuracy of the patient's name and medication, dosage, directions and amount of medication prescribed;

c. Standards that the physician expects to be met to ensure the accuracy of the dispensing system and the training and qualifications of staff members assigned to dispense via the dispensing system;

d. The procedures utilized to ensure that the physician(s) dispensing via the automated system provide(s) patients counseling regarding the prescription drugs being dispensed;

e. Staff training and qualifications for dispensing via the dispensing system;

f. A list of staff members who meet the qualifications and who are assigned to dispense via the dispensing system;

g. A plan for testing the dispensing system and each staff member assigned to dispense via the dispensing system;

h. The results of testing that show compliance with the standards prior to implementation of the dispensing system and prior to approval of each staff member to dispense via the dispensing system;

i. A plan for interval testing of the accuracy of dispensing, at least annually; and

j. A plan for addressing inaccuracies, including discontinuing dispensing until the accuracy level can be reattained.

13.6(2) Those dispensing systems already in place shall show evidence of a plan and testing within two months of August 31, 2001.

13.6(3) The internal quality control assurance plan shall be submitted to the board of medicine upon request.

This rule is intended to implement Iowa Code section 147.107 and 2001 Iowa Acts, House File 726, section 5(10), paragraph *"i."*

653—13.7(147,148,272C) Standards of practice—office practices.

13.7(1) *Termination of the physician-patient relationship.* A physician may choose whom to serve. Having undertaken the care of a patient, the physician may not neglect the patient. A physician shall

provide a patient written notice of the termination of the physician-patient relationship. A physician shall ensure that emergency medical care is available to the patient during the 30-day period following notice of the termination of the physician-patient relationship.

13.7(2) *Patient referrals.* A physician shall not pay or receive compensation for patient referrals.

13.7(3) *Confidentiality.* A physician shall maintain the confidentiality of all patient information obtained in the practice of medicine. Information shall be divulged by the physician when authorized by law or the patient or when required for patient care.

13.7(4) *Sexual conduct.* It is unprofessional and unethical conduct, and is grounds for disciplinary action, for a physician to engage in conduct which violates the following prohibitions:

a. In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient, or with the patient's parent or guardian if the patient is a minor.

b. A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the physician-patient relationship, regardless of whether the patient consents to that conduct.

c. A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

d. A psychiatrist, or a physician who provides mental health counseling to a patient, shall never engage in any sexual conduct with a current or former patient, or with that patient's parent or guardian if the patient was a minor, regardless of whether the patient consents to that conduct.

13.7(5) *Disruptive behavior.* A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.

13.7(6) *Sexual harassment.* A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.

13.7(7) *Transfer of medical records.* A physician must provide a copy of all medical records generated by the physician in a timely manner to the patient or another physician designated by the patient, upon written request when legally requested to do so by the subject patient or by a legally designated representative of the subject patient, except as otherwise required or permitted by law.

13.7(8) *Retention of medical records.* The following paragraphs become effective on January 1, 2004.

a. A physician shall retain all medical records, not appropriately transferred to another physician or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.

b. A physician must retain all medical records of minor patients, not appropriately transferred to another physician or entity, for a period consistent with that established by Iowa Code section 614.8.

c. Upon a physician's death or retirement, the sale of a medical practice or a physician's departure from the physician's medical practice:

(1) The physician or the physician's representative must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The physician shall notify all active patients that their records will be transferred to another physician or entity that will retain custody of their records and that, at their written request, the records will be sent to the physician or entity of the patient's choice.

653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians. This rule establishes standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa.

13.8(1) *Definitions.* As used in this rule:

"Alter" means to change the cellular structure of living tissue.

"Capable of" means any means, method, device or instrument which, if used as intended or otherwise to its greatest strength, has the potential to alter or damage living tissue below the superficial epidermal cells.

"Damage" means to cause a harmful change in the cellular structure of living tissue.

"Delegate" means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians.

"Medical aesthetic service" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; collagen induction therapy (microneedling); fat-freezing treatment (cool sculpting); botox injections; collagen injections; and tattoo removal.

"Medical director" means a physician who assumes the role of, or holds oneself out as, medical director at a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians at a medical spa. The medical director is ultimately responsible for all medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians at a medical spa.

"Medical spa" means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

"Nonsuperficial" means that the therapy alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells.

"Qualified laser technician" means any person, licensed or unlicensed, who has successfully completed a minimum of 120 hours of training, including a minimum of 40 hours of didactic study and 80 hours of clinical training, in the safe and effective use of lasers in the performance of medical aesthetic services at an accredited laser training program. For the purposes of this rule, a qualified laser technician may only use lasers in the performance of delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa. An unlicensed qualified laser technician may not perform any other medical aesthetic services defined in this rule.

"Qualified licensed or certified nonphysician person" means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another health- or skin care-related licensing board in Iowa and is qualified to perform delegated medical aesthetic services under the supervision of a qualified supervising physician at a medical spa.

"Supervision" means the oversight of qualified licensed or certified nonphysician persons or qualified laser technicians who perform medical aesthetic services delegated by a medical director.

13.8(2) *Practice of medicine.* The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified

nonphysician persons or qualified laser technicians if the service has been delegated by a medical director who is responsible for supervision of the services performed at a medical spa in Iowa.

13.8(3) *Medical director.* A physician who serves as medical director at a medical spa shall:

a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;

b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;

c. Retain responsibility for the supervision of each medical aesthetic service performed by qualified licensed or certified nonphysician persons or qualified laser technicians;

d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and

e. Be clearly identified as the medical director in all advertising activities, Internet websites and signage related to the medical spa.

13.8(4) *Delegated medical aesthetic service.* When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians, the service shall be:

a. Within the medical director's scope of practice and medical competence to supervise;

b. Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and

c. A routine and technical service, the performance of which does not require the skill of a licensed physician.

13.8(5) *Supervision.* A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons or qualified laser technicians is responsible for providing appropriate supervision. The medical director shall:

a. Ensure that all licensed or certified nonphysician persons or qualified laser technicians are qualified and competent to safely perform each delegated medical aesthetic service by personally assessing the person's education, training, experience and ability;

b. Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person's license or certification unless the person is supervised by a qualified supervising physician;

c. Ensure that all qualified licensed or certified nonphysician persons or qualified laser technicians receive direct, in-person, on-site supervision from the medical director or other qualified licensed physician at least four hours each week and that the regular supervision is documented;

d. Provide on-site review of medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians each week and review at least 10 percent of patient charts for medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians;

e. Be physically located, at all times, within 60 miles of the location where delegated medical aesthetic services are performed;

f. Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services, particularly in case of injury or an emergency;

g. Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services;

h. Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving delegated medical aesthetic services performed by qualified licensed or certified nonphysician persons or qualified laser technicians;

i. Ensure that all qualified licensed or certified nonphysician persons or qualified laser technicians maintain accurate and timely medical records for the delegated medical aesthetic services they perform;

j. Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by the medical director or other qualified licensed physician and all qualified licensed or

certified nonphysician persons or qualified laser technicians and that such informed consent is timely documented in the patient's medical record;

k. Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians, and all qualified licensed or certified nonphysician persons or qualified laser technicians are visibly displayed at each medical spa where they perform medical aesthetic services and provided in writing to each patient receiving medical aesthetic services at a medical spa; and

l. Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons or qualified laser technicians who perform delegated medical aesthetic services at a medical spa, within 14 days of a request by the board.

13.8(6) *Continuing medical education.* All medical directors, qualified licensed or certified nonphysician persons and qualified laser technicians who practice at a medical spa in Iowa shall complete a minimum of 20 hours of continuing medical education in the safe and effective performance of medical aesthetic services each year.

13.8(7) *Exceptions.* This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

13.8(8) *Physician assistants.* Nothing in this rule shall be interpreted to contradict or supersede the rules established in 645—Chapters 326 and 327.

[**ARC 9088B**, IAB 9/22/10, effective 10/27/10; **ARC 4247C**, IAB 1/16/19, effective 2/20/19]

653—13.9(147,148,272C) Standards of practice—interventional chronic pain management. This rule establishes standards of practice for the practice of interventional chronic pain management. The purpose of this rule is to assist physicians who consider interventional techniques to treat patients with chronic pain.

13.9(1) *Definition.* As used in this rule:

"Interventional chronic pain management" means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain. Interventional techniques include percutaneous (through the skin) needle placement to inject drugs in targeted areas. Interventional techniques also include nerve ablation (excision or amputation) and certain surgical procedures. Interventional techniques often involve injection of steroids, analgesics, and anesthetics and include: lumbar, thoracic, and cervical spine injections, intra-articular injections, intrathecal injections, epidural injections (both regular and transforaminal), facet injections, discography, nerve destruction, occipital nerve blocks, lumbar sympathetic blocks and vertebroplasty, and kyphoplasty. Interventional chronic pain management includes the use of fluoroscopy when it is used to assess the cause of a patient's chronic pain or when it is used to identify anatomic landmarks during interventional techniques. Specific interventional techniques include: SI joint injections; spinal punctures; epidural blood patches; epidural injections; epidural/spinal injections; lumbar injections; epidural/subarachnoid catheters; occipital nerve blocks; axillary nerve blocks; intercostals nerve blocks; multiple intercostals nerve blocks; ilioinguinal nerve blocks; peripheral nerve blocks; facet joint injections; cervical/thoracic facet joint injections; lumbar facet injections; multiple lumbar facet injections; transforaminal epidural steroid injections; transforaminal cervical steroid injections; sphenopalatine ganglion blocks; paravertebral sympathetic blocks; neurolysis of the lumbar facet nerve; neurolysis of the cervical facet nerve; and destruction of the peripheral nerve.

13.9(2) *Interventional chronic pain management.* The practice of interventional chronic pain management shall include the following:

a. Comprehensive assessment of the patient;

b. Diagnosis of the cause of the patient's pain;

c. Evaluation of alternative treatment options;

d. Selection of appropriate treatment options;

e. Termination of prescribed treatment options when appropriate;

f. Follow-up care; and

g. Collaboration with other health care providers.

13.9(3) *Practice of medicine.* Interventional chronic pain management is the practice of medicine.
[**ARC 8918B**, IAB 6/30/10, effective 8/4/10]

653—13.10(147,148,272C) Standards of practice—physicians who prescribe or administer abortion-inducing drugs.

13.10(1) *Definition.* As used in this rule:

"Abortion-inducing drug" means a drug, medicine, mixture, or preparation, when it is prescribed or administered with the intent to terminate the pregnancy of a woman known to be pregnant.

13.10(2) *Physical examination required.* A physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

13.10(3) *Physician's physical presence required.* When inducing an abortion by providing an abortion-inducing drug, a physician must be physically present with the woman at the time the abortion-inducing drug is provided.

13.10(4) *Follow-up appointment required.* If an abortion is induced by an abortion-inducing drug, the physician inducing the abortion must schedule a follow-up appointment with the woman at the same facility where the abortion-inducing drug was provided, 12 to 18 days after the woman's use of an abortion-inducing drug to confirm the termination of the pregnancy and evaluate the woman's medical condition. The physician shall use all reasonable efforts to ensure that the woman is aware of the follow-up appointment and that she returns for the appointment.

13.10(5) *Parental notification regarding pregnant minors.* A physician shall not induce an abortion by providing an abortion-inducing drug to a pregnant minor prior to compliance with the requirements of Iowa Code chapter 135L and rules 641—89.12(135L) and 641—89.21(135L) adopted by the public health department.
[**ARC 1034C**, IAB 10/2/13, effective 11/6/13]

653—13.11(147,148,272C) Standards of practice—telemedicine. This rule establishes standards of practice for the practice of medicine using telemedicine.

1. The board recognizes that technological advances have made it possible for licensees in one location to provide medical care to patients in another location with or without an intervening health care provider.

2. Telemedicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.

3. The board advises that licensees using telemedicine will be held to the same standards of care and professional ethics as licensees using traditional in-person medical care.

4. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may subject the licensee to potential discipline by the board.

13.11(1) *Definitions.* As used in this rule:

"Asynchronous store-and-forward transmission" means the collection of a patient's relevant health information and the subsequent transmission of the data from an originating site to a health care provider at a distant site without the presence of the patient.

"Board" means the Iowa board of medicine.

"In-person encounter" means that the physician and the patient are in the physical presence of each other and are in the same physical location during the physician-patient encounter.

"Licensee" means a medical physician or osteopathic physician licensed by the board.

"Telemedicine" means the practice of medicine using electronic audio-visual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine includes asynchronous store-and-forward technologies, remote monitoring, and real-time interactive services, including teleradiology and telepathology. Telemedicine shall not include the provision of medical services only through an

audio-only telephone, email messages, facsimile transmissions, or U.S. mail or other parcel service, or any combination thereof.

"Telemedicine technologies" means technologies and devices enabling secure electronic communications and information exchanges between a licensee in one location and a patient in another location with or without an intervening health care provider.

13.11(2) *Practice guidelines.* A licensee who uses telemedicine shall utilize evidence-based telemedicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes. The board acknowledges that some nationally recognized medical specialty organizations have established comprehensive telemedicine practice guidelines that address the clinical and technological aspects of telemedicine for many medical specialties.

13.11(3) *Iowa medical license required.* A physician who uses telemedicine in the diagnosis and treatment of a patient located in Iowa shall hold an active Iowa medical license consistent with state and federal laws. Nothing in this rule shall be construed to supersede the exceptions to licensure contained in 653—subrule 9.2(2).

13.11(4) *Standards of care and professional ethics.* A licensee who uses telemedicine shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to potential discipline by the board.

13.11(5) *Scope of practice.* A licensee who uses telemedicine shall ensure that the services provided are consistent with the licensee's scope of practice, including the licensee's education, training, experience, ability, licensure, and certification.

13.11(6) *Identification of patient and physician.* A licensee who uses telemedicine shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, certification, and credentials of all health care providers who provide telemedicine services prior to the provision of care.

13.11(7) *Physician-patient relationship.*

a. A licensee who uses telemedicine shall establish a valid physician-patient relationship with the person who receives telemedicine services. The physician-patient relationship begins when:

(1) The person with a health-related matter seeks assistance from a licensee;

(2) The licensee agrees to undertake diagnosis and treatment of the person; and

(3) The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician and the person.

b. A valid physician-patient relationship may be established by:

(1) In-person encounter. Through an in-person medical interview and physical examination where the standard of care would require an in-person encounter;

(2) Consultation with another licensee. Through consultation with another licensee (or other health care provider) who has an established relationship with the patient and who agrees to participate in, or supervise, the patient's care; or

(3) Telemedicine encounter. Through telemedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telemedicine practice guidelines that address the clinical and technological aspects of telemedicine.

13.11(8) *Medical history and physical examination.* Generally, a licensee shall perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physical examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine shall interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient. An Internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast

to an adaptive, interactive and responsive online interview, does not constitute an acceptable medical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by a licensee.

13.11(9) *Nonphysician health care providers.* If a licensee who uses telemedicine relies upon or delegates the provision of telemedicine services to a nonphysician health care provider, the licensee shall:

a. Ensure that systems are in place to ensure that the nonphysician health care provider is qualified and trained to provide that service within the scope of the nonphysician health care provider's practice;

b. Ensure that the licensee is available in person or electronically to consult with the nonphysician health care provider, particularly in the case of injury or an emergency.

13.11(10) *Informed consent.* A licensee who uses telemedicine shall ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

13.11(11) *Coordination of care.* A licensee who uses telemedicine shall, when medically appropriate, identify the medical home or treating physician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The licensee shall provide a copy of the medical record to the patient's medical home or treating physician(s).

13.11(12) *Follow-up care.* A licensee who uses telemedicine shall have access to, or adequate knowledge of, the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

13.11(13) *Emergency services.* A licensee who uses telemedicine shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency.

13.11(14) *Medical records.* A licensee who uses telemedicine shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee shall note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telemedicine encounter. The licensee shall ensure that the patient receives, upon request, a summary of each telemedicine encounter in a timely manner.

13.11(15) *Privacy and security.* A licensee who uses telemedicine shall ensure that all telemedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act to ensure that all patient communications and records are secure and remain confidential.

a. Written protocols shall be established that address the following:

(1) Privacy;

(2) Health care personnel who will process messages;

(3) Hours of operation;

(4) Types of transactions that will be permitted electronically;

(5) Required patient information to be included in the communication, including patient name, identification number and type of transaction;

(6) Archiving and retrieval; and

(7) Quality oversight mechanisms.

b. The written protocols should be periodically evaluated for currency and should be maintained in an accessible and readily available manner for review. The written protocols shall include sufficient privacy and security measures to ensure the confidentiality and integrity of patient-identifiable information, including password protection, encryption or other reliable authentication techniques.

13.11(16) *Technology and equipment.* The board recognizes that three broad categories of telemedicine technologies currently exist, including asynchronous store-and-forward technologies,

remote monitoring, and real-time interactive services. While some telemedicine programs are multispecialty in nature, others are tailored to specific diseases and medical specialties. The technology and equipment utilized for telemedicine shall comply with the following requirements:

a. The technology and equipment utilized in the provision of telemedicine services must comply with all relevant safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;

b. The technology and equipment utilized in the provision of telemedicine services must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telemedicine services; and

c. The technology and equipment utilized in the provision of telemedicine services must be compliant with the Health Insurance Portability and Accountability Act.

13.11(17) *Disclosure and functionality of telemedicine services.* A licensee who uses telemedicine shall ensure that the following information is clearly disclosed to the patient:

a. Types of services provided;

b. Contact information for the licensee;

c. Identity, licensure, certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;

d. Limitations in the drugs and services that can be provided via telemedicine;

e. Fees for services, cost-sharing responsibilities, and how payment is to be made, if these differ from an in-person encounter;

f. Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);

g. Appropriate uses and limitations of the technologies, including in emergency situations;

h. Uses of and response times for emails, electronic messages and other communications transmitted via telemedicine technologies;

i. To whom patient health information may be disclosed and for what purpose;

j. Rights of patients with respect to patient health information; and

k. Information collected and passive tracking mechanisms utilized.

13.11(18) *Patient access and feedback.* A licensee who uses telemedicine shall ensure that the patient has easy access to a mechanism for the following purposes:

a. To access, supplement and amend patient-provided personal health information;

b. To provide feedback regarding the quality of the telemedicine services provided; and

c. To register complaints. The mechanism shall include information regarding the filing of complaints with the board.

13.11(19) *Financial interests.* Advertising or promotion of goods or products from which the licensee(s) receives direct remuneration, benefit or incentives (other than the fees for the medical services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general health information sites to enhance education; however, the licensee(s) should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, licensees should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited. Licensees shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy.

13.11(20) *Circumstances where the standard of care may not require a licensee to personally interview or examine a patient.* Under the following circumstances, whether or not such circumstances involve the use of telemedicine, a licensee may treat a patient who has not been personally interviewed, examined and diagnosed by the licensee:

a. Situations in which the licensee prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;

b. For institutional settings, including writing initial admission orders for a newly hospitalized patient;

c. Call situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;

d. Cross-coverage situations in which a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;

e. Situations in which the patient has been examined in person by an advanced registered nurse practitioner or a physician assistant or other licensed practitioner with whom the licensee has a supervisory or collaborative relationship;

f. Emergency situations in which the life or health of the patient is in imminent danger;

g. Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;

h. Situations in which the licensee has diagnosed a sexually transmitted disease in a patient and the licensee prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the U.S. Centers for Disease Control and Prevention; and

i. For licensed or certified nursing facilities, residential care facilities, intermediate care facilities, assisted living facilities and hospice settings.

13.11(21) *Prescribing based solely on an Internet request, Internet questionnaire or a telephonic evaluation—prohibited.* Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e., a static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited. Absent a valid physician-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited, with the exception of the circumstances described in subrule 13.11(20).

13.11(22) *Medical abortion.* Nothing in this rule shall be interpreted to contradict or supersede the requirements established in rule 653—13.10(147,148,272C).

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

[**ARC 1983C**, IAB 4/29/15, effective 6/3/15]

653—13.12(135,147,148,272C,280) Standards of practice—prescribing epinephrine auto-injectors in the name of an authorized facility.

13.12(1) Definitions. For purposes of this rule:

"Authorized facility" means any nonpublic school which is accredited pursuant to Iowa Code section 256.11, any school directly supported in whole or in part by taxation, a food establishment as defined in Iowa Code section 137F.1, a carnival as defined in Iowa Code section 88A.1, a recreational camp, a youth sports facility, or a sports area.

"Epinephrine auto-injector" means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

"Physician" means a person licensed pursuant to Iowa Code chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

13.12(2) Notwithstanding any other provision of law to the contrary, a physician may prescribe epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A.

13.12(3) A physician who prescribes epinephrine auto-injectors in the name of an authorized facility to be maintained for use pursuant to Iowa Code sections 135.185, 280.16 and 280.16A, provided the physician has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.

[**ARC 2387C**, IAB 2/3/16, effective 3/9/16]

653—13.13(144E,147,148,272C) Standards of practice—experimental treatments for patients with a terminal illness.

13.13(1) *Exemption from discipline.* To the extent consistent with state law, the board shall not revoke, fail to renew, suspend, or take any action against a physician's license based solely

on the physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

13.13(2) *Eligible patient.* A physician shall ensure that a patient meets all of the following conditions prior to the use of an investigational drug, biological product, or device pursuant to this rule:

a. The patient has a terminal illness, attested to by the patient's treating physician.

b. The patient has considered and rejected or has tried and failed to respond to all other treatment options approved by the U.S. Food and Drug Administration (FDA).

c. The patient has received a recommendation from the patient's physician for an investigational drug, biological product, or device.

d. The patient has given written informed consent for the use of the investigational drug, biological product, or device.

e. The patient has documentation from the patient's physician that the patient meets the requirements of this rule.

13.13(3) *Investigational drug, biological product, or device.* A physician may recommend access to or treatment with an investigational drug, biological product, or device that has successfully completed phase 1 of an FDA-approved clinical trial but has not yet been approved for general use by the FDA and remains under investigation in an FDA-approved clinical trial.

13.13(4) *Terminal illness.* A physician shall ensure that a patient has a terminal illness prior to the use of an investigational drug, biological product, or device pursuant to this rule. A terminal illness is a progressive disease or medical or surgical condition that entails significant functional impairment and that is not considered by a treating physician to be reversible even with administration of treatments approved by the FDA and that, without life-sustaining procedures, will result in death.

13.13(5) *Written informed consent.* A physician shall obtain written informed consent prior to the use of an investigational drug, biological product, or device pursuant to this rule. Written informed consent is a written document that is signed by a patient, a parent of a minor patient, or a legal guardian or other legal representative of the patient and attested to by the patient's treating physician and a witness and that includes all of the following:

a. An explanation of the products and treatments approved by the FDA for the disease or condition from which the patient suffers.

b. An attestation that the patient concurs with the patient's treating physician in believing that all products and treatments approved by the FDA are unlikely to prolong the patient's life.

c. Clear identification of the specific proposed investigational drug, biological product, or device that the patient is seeking to use.

d. A description of the best and worst potential outcomes of using the investigational drug, biological product, or device and a realistic description of the most likely outcome. The description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by use of the proposed investigational drug, biological product, or device. The description shall be based on the treating physician's knowledge of the proposed investigational drug, biological product, or device in conjunction with an awareness of the patient's condition.

e. A statement that the patient's health plan or third-party administrator and provider are not obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product, or device, unless the patient's health plan or third-party administrator and provider are specifically required to do so by law or contract.

f. A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment with the investigational drug, biological product, or device and that hospice care may be reinstated if treatment ends and the patient meets hospice eligibility requirements.

g. A statement that the patient understands that the patient is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that this liability extends to the patient's estate unless a contract between the patient and the manufacturer of the investigational drug, biological product, or device states otherwise.

13.13(6) *Assisting suicide.* This rule shall not be construed to allow a patient's treating physician to assist the patient in committing or attempting to commit suicide as prohibited in Iowa Code section 707A.2.

13.13(7) *Grounds for discipline.* A physician may be subject to disciplinary action for violation of rule 653—13.13(144E,147,148,272C) or 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

a. The physician recommends access to or treatment with an investigational drug, biological product, or device to an individual who is not an eligible patient pursuant to this rule.

b. The physician fails to obtain appropriate written informed consent prior to recommending access to or treatment with an investigational drug, biological product, or device pursuant to this rule.

c. The physician assists the patient in committing or attempting to commit suicide as prohibited in Iowa Code section 707A.2.

This rule is intended to implement Iowa Code chapters 144E, 147, 148 and 272C.

[**ARC 3588C**, IAB 1/17/18, effective 2/21/18]

653—13.14(147,148,272C) Standards of practice—tick-borne disease diagnosis and treatment.

13.14(1) *Exemption from discipline.* A person licensed by the board under Iowa Code chapter 148 shall not be subject to discipline under this chapter or the board's enabling statute based solely on the physician's recommendation or provision of a treatment method for Lyme disease or other tick-borne disease if the recommendation or provision of such treatment meets all the following criteria:

a. The treatment is provided after an examination is performed and informed consent is received from the patient.

b. The physician identifies a medical reason for recommending or providing the treatment.

c. The treatment is provided after the physician informs the patient about other recognized treatment options and describes to the patient the physician's education, experience, and credentials regarding the treatment of Lyme disease or other tick-borne disease.

d. The physician uses the physician's own medical judgment based on a thorough review of all available clinical information and Lyme disease or other tick-borne disease literature to determine the best course of treatment for the individual patient.

e. The treatment will not, in the opinion of the physician, result in the direct and proximate death of or serious bodily injury to the patient.

13.14(2) *Lyme disease.* According to the Centers for Disease Control and Prevention (CDC), Lyme disease is caused by the bacterium *Borrelia burgdorferi* and is transmitted to humans through the bite of infected blacklegged ticks, commonly known as deer ticks. Typical symptoms include fever, headache, fatigue, and a characteristic skin rash called erythema migrans. If left untreated, infection can spread to joints, the heart, and the nervous system. Lyme disease is diagnosed based on symptoms, physical findings (e.g., a rash), and the possibility of exposure to infected ticks. Laboratory testing is helpful if used correctly and performed with validated methods. Steps to prevent Lyme disease include using insect repellent, removing ticks promptly, applying pesticides, and reducing tick habitat. The ticks that transmit Lyme disease can occasionally transmit other tick-borne diseases as well.

13.14(3) *Lyme disease treatment.* Most cases of Lyme disease can be treated successfully with a few weeks of antibiotics. Over the past several years, the International Lyme and Associated Diseases Society (ILADS) has supported longer courses of antibiotics for some patients, versus the prescribed treatment durations identified by the Infectious Diseases Society of America (IDSA) and referenced by the CDC. While IDSA has expressed concern about overtreatment, ILADS points out that treatment decisions should be based on a risk-benefit analysis. Both groups have published evidence-based guidelines.

13.14(4) *Tick-borne diseases.* According to the CDC, tick-borne diseases include:

a. *Anaplasmosis* is transmitted to humans by tick bites primarily from the blacklegged tick (*Ixodes scapularis*) in the northeastern and upper midwestern regions of the United States (U.S.) and the western blacklegged tick (*Ixodes pacificus*) along the Pacific coast.

b. *Babesiosis* is caused by microscopic parasites that infect red blood cells. Most human cases of babesiosis in the U.S. are caused by *Babesia microti*. *Babesia microti* is transmitted by the blacklegged

tick (*Ixodes scapularis*) and is found primarily in the northeastern and upper midwestern regions of the U.S.

c. *Borrelia mayonii* infection has recently been described as a cause of illness in the upper midwestern region of the U.S. This infection has been found in blacklegged ticks (*Ixodes scapularis*) in Minnesota and Wisconsin. *Borrelia mayonii* is a new species and is the only species besides *B. burgdorferi* known to cause Lyme disease in North America.

d. *Borrelia miyamotoi* infection has recently been described as a cause of illness in the U.S. This infection is transmitted by the blacklegged tick (*Ixodes scapularis*) and has a geographic range similar to that of Lyme disease.

e. *Bourbon virus* infection has been identified in a limited number of patients in the midwestern and southern regions of the U.S. At this time, it is not known if the virus might be found in other areas of the U.S.

f. *Colorado tick fever* is caused by a virus transmitted by the Rocky Mountain wood tick (*Dermacentor andersoni*). Colorado tick fever occurs in the Rocky Mountain states at elevations of 4,000 to 10,500 feet.

g. *Ehrlichiosis* is transmitted to humans by the lone star tick (*Amblyomma americanum*), found primarily in the south central and eastern regions of the U.S.

h. *Heartland virus* cases have been identified in the midwestern and southern regions of the U.S. Studies suggest that lone star ticks (*Amblyomma americanum*) can transmit the virus. It is unknown if the virus may be found in other areas of the U.S.

i. *Lyme disease* is transmitted by the blacklegged tick (*Ixodes scapularis*) in the northeastern and upper midwestern regions of the U.S. and by the western blacklegged tick (*Ixodes pacificus*) along the Pacific coast.

j. *Powassan disease* is transmitted by the blacklegged tick (*Ixodes scapularis*) and the groundhog tick (*Ixodes cookei*). Cases have been reported primarily from northeastern states and the Great Lakes region.

k. *Rickettsia parkeri rickettsiosis* is transmitted to humans by the Gulf Coast tick (*Amblyomma maculatum*).

l. *Rocky Mountain spotted fever* is transmitted by the American dog tick (*Dermacentor variabilis*), Rocky Mountain wood tick (*Dermacentor andersoni*), and the brown dog tick (*Rhipicephalus sanguineus*) in the U.S. The brown dog tick and other tick species are associated with Rocky Mountain spotted fever in Central America and South America.

m. *Southern tick-associated rash illness* is transmitted via bites from the lone star tick (*Amblyomma americanum*) found in the southeastern and eastern regions of the U.S.

n. *Tick-borne relapsing fever* is transmitted to humans through the bite of infected soft ticks. Tick-borne relapsing fever has been reported in 15 states: Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming and is associated with sleeping in rustic cabins and vacation homes.

o. *Tularemia* is transmitted to humans by the dog tick (*Dermacentor variabilis*), the wood tick (*Dermacentor andersoni*), and the lone star tick (*Amblyomma americanum*). Tularemia occurs throughout the U.S.

p. *364D rickettsiosis* (*Rickettsia phillipi*) is transmitted to humans by the Pacific Coast tick (*Dermacentor occidentalis*). This is a new disease that has been found in California.

13.14(5) *Grounds for discipline.* A physician may be subject to disciplinary action for violation of these rules or the rules found in 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

a. The physician fails to perform and document an appropriate examination or fails to obtain and document appropriate informed consent from the patient.

b. The physician fails to identify and document a medical reason for recommending or providing the treatment.

c. The physician fails to inform the patient about other recognized treatment options or fails to describe to the patient the physician's education, experience, and credentials regarding the treatment of Lyme disease or other tick-borne diseases.

d. The physician fails to use the physician's own medical judgment based on a thorough review of all available clinical information and Lyme disease or other tick-borne disease literature to determine the best course of treatment for the individual patient.

e. The treatment provided, in the opinion of the physician, will likely result in the direct and proximate death of or serious bodily injury to the patient.

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

[**ARC 3589C**, IAB 1/17/18, effective 2/21/18]

653—13.15(124E,147,148,272C) Standards of practice—medical cannabidiol.

13.15(1) *Definitions.* For purposes of this rule:

"Board of medicine" means the board established pursuant to Iowa Code chapters 147 and 148.

"Bordering state" means the same as defined in Iowa Code section 331.910.

"Debilitating medical condition" means any of the following:

1. Cancer, if the underlying condition or treatment produces one or more of the following:
   - Severe or chronic pain.
   - Nausea or severe vomiting.
   - Cachexia or severe wasting.
2. Multiple sclerosis with severe and persistent muscle spasms.
3. Seizures, including those characteristic of epilepsy.
4. AIDS or HIV as defined in Iowa Code section 141A.1.
5. Crohn's disease.
6. Amyotrophic lateral sclerosis.
7. Any terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
   - Severe or chronic pain.
   - Nausea or severe vomiting.
   - Cachexia or severe wasting.
8. Parkinson's disease.
9. Untreatable pain.
10. Ulcerative colitis.
11. Severe, intractable pediatric autism with self-injurious or aggressive behaviors.
12. Corticobasal degeneration.

"Department" means the Iowa department of public health.

"Form and quantity" means the types and amounts of medical cannabidiol allowed to be dispensed to a patient or primary caregiver as approved by the department subject to recommendation by the medical cannabidiol board and approval by the board of medicine.

"Medical cannabidiol" means any pharmaceutical grade cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* or any other preparation thereof that has a tetrahydrocannabinol level of no more than 3 percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and adopted by the department pursuant to rule.

"Medical cannabidiol board" means the board established pursuant to Iowa Code section 124E.5.

"Primary caregiver" means a person who is a resident of this state or a bordering state, including but not limited to a parent or legal guardian, at least 18 years of age, who has been designated by a patient's health care practitioner as a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol pursuant to the provisions of this chapter.

"Untreatable pain" means any pain whose cause cannot be removed and, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used without adequate result or with intolerable side effects.

"Written certification" means a document signed by a physician licensed pursuant to Iowa Code chapter 148 with whom the patient has established a patient-physician relationship and who is the patient's primary care provider which states that the patient has a debilitating medical condition and identifies that condition and provides any other relevant information.

13.15(2) *Written certification.* A physician who is a patient's primary care provider may provide the patient a written certification of diagnosis if, after examining and treating the patient, the physician determines, in the physician's medical judgment, that the patient suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E.

a. The physician shall provide explanatory information as provided by the department to the patient about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

b. Subsequently, the physician shall do the following:

(1) Determine, on an annual basis, if the patient continues to suffer from a debilitating medical condition and, if so, may issue the patient a new written certification of that diagnosis.

(2) Otherwise comply with all requirements established by the department pursuant to rule.

c. A physician may provide, but has no duty to provide, a written certification pursuant to this rule.

13.15(3) *Adding or removing debilitating medical conditions and amending form and quantity of medical cannabidiol.* Recommendations made by the medical cannabidiol board pursuant to Iowa Code section 124E.5 relating to the addition or removal of allowable debilitating medical conditions for which the medical use of cannabidiol would be medically beneficial or to the amendment of the form and quantity of allowable medical uses of cannabidiol shall be made to the board of medicine for consideration. The medical cannabidiol board shall submit a written recommendation, a copy of the petition and all other information received during consideration of the petition. The board of medicine shall consider the information received from the medical cannabidiol board and may seek information from other sources if it is deemed relevant by the board of medicine. The decision regarding a recommendation by the medical cannabidiol board is at the sole discretion of the board of medicine. The board of medicine shall make its decision within 180 days of receipt of the recommendation from the medical cannabidiol board. If the recommendation is approved by the board of medicine, it shall be adopted by rule.

13.15(4) *Financial interests.* A physician shall not share office space with, accept referrals from, or have any financial relationship with a medical cannabidiol manufacturer or dispensary.

13.15(5) *Criminal prosecution.* A physician, including any authorized agent or employee thereof, shall not be subject to prosecution for the unlawful certification, possession, or administration of marijuana under the laws of this state for activities arising directly out of or directly related to the certification or use of medical cannabidiol in the treatment of a patient diagnosed with a debilitating medical condition as authorized by Iowa Code chapter 124E.

13.15(6) *Civil or disciplinary penalties.* A physician, including any authorized agent or employee thereof, shall not be subject to any civil or disciplinary penalties by the board of medicine or any business, occupational, or professional licensing board or entity, solely for activities conducted relating to a patient's possession or use of medical cannabidiol as authorized by Iowa Code chapter 124E. Nothing in this rule prevents the board of medicine from taking action in response to violations of any other sections of law or rule.

13.15(7) *Grounds for discipline.* A physician may be subject to disciplinary action for violation of these rules or the rules found in 653—Chapter 23. Grounds for discipline include, but are not limited to, the following:

a. The physician provides an individual a written certification without establishing a patient-physician relationship, including examining and treating the individual, or without being the individual's primary care provider.

b. The physician provides a patient a written certification without determining, in the physician's medical judgment, that the patient suffers from a debilitating medical condition that qualifies for the use of medical cannabidiol pursuant to Iowa Code chapter 124E.

c. The physician provides a patient a written certification without providing explanatory information as provided by the department to the patient about the therapeutic use of medical cannabidiol and the possible risks, benefits, and side effects of the proposed treatment.

d. The physician provides an individual a new written certification without determining, on an annual basis, that the patient continues to suffer from a debilitating medical condition.

e. The physician shares office space with, accepts referrals from, or has a financial relationship with a medical cannabidiol manufacturer or dispensary.

This rule is intended to implement Iowa Code chapters 124E, 147, 148 and 272C.

[**ARC 3830C**, IAB 6/6/18, effective 7/11/18; **ARC 4248C**, IAB 1/16/19, effective 2/20/19; **ARC 4377C**, IAB 3/27/19, effective 5/1/19; **ARC 4658C**, IAB 9/11/19, effective 10/16/19]

653—13.16 to **13.19** Reserved.

653—13.20(147,148) Principles of medical ethics. The Code of Medical Ethics (2002-2003) prepared and approved by the American Medical Association and the Code of Ethics (2002-2003) prepared and approved by the American Osteopathic Association shall be utilized by the board as guiding principles in the practice of medicine and surgery and osteopathic medicine and surgery in this state.

13.20(1) *Conflict of interest.* A physician should not provide medical services under terms or conditions which tend to interfere with or impair the free and complete exercise of the physician's medical judgment and skill or tend to cause a deterioration of the quality of medical care.

13.20(2) *Fees.* Any fee charged by a physician shall be reasonable.

653—13.21(17A,147,148,272C) Waiver or variance prohibited. Rules in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed 3/13/81, Notice 1/7/81—published 4/1/81, effective 5/6/81]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 6/6/90]
[Filed 3/22/96, Notice 9/27/95—published 4/10/96, effective 6/15/96][1]
[Filed 11/22/96, Notice 8/28/96—published 12/18/96, effective 1/22/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 11/7/00, Notice 4/19/00—published 11/29/00, effective 1/3/01]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 2/16/01, Notice 12/27/00—published 3/7/01, effective 4/11/01]
[Filed emergency 8/31/01 after Notice 7/25/01—published 9/19/01, effective 8/31/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 6/6/02, Notice 5/1/02—published 6/26/02, effective 7/31/02]
[Filed 1/3/03, Notice 11/27/02—published 1/22/03, effective 2/26/03]
[Filed 12/4/03, Notice 8/20/03—published 12/24/03, effective 1/28/04]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 5/3/06, Notice 2/15/06—published 5/24/06, effective 10/1/06]
[Filed 6/28/07, Notice 5/9/07—published 8/1/07, effective 9/5/07]
[Filed 4/3/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]
[Filed ARC 8918B (Notice ARC 8579B, IAB 3/10/10), IAB 6/30/10, effective 8/4/10]
[Filed ARC 9088B (Notice ARC 8925B, IAB 6/30/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9599B (Notice ARC 9414B, IAB 3/9/11), IAB 7/13/11, effective 8/17/11]
[Filed ARC 1033C (Notice ARC 0890C, IAB 7/24/13), IAB 10/2/13, effective 11/6/13]
[Filed ARC 1034C (Notice ARC 0891C, IAB 7/24/13), IAB 10/2/13, effective 11/6/13]
[Filed ARC 1983C (Notice ARC 1769C, IAB 12/10/14), IAB 4/29/15, effective 6/3/15]
[Filed ARC 2387C (Notice ARC 2249C, IAB 11/25/15), IAB 2/3/16, effective 3/9/16]
[Filed ARC 2705C (Notice ARC 2535C, IAB 5/11/16), IAB 9/14/16, effective 10/19/16]
[Filed ARC 3588C (Notice ARC 3360C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]

[Filed ARC 3589C (Notice ARC 3361C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]
[Filed ARC 3830C (Notice ARC 3675C, IAB 3/14/18), IAB 6/6/18, effective 7/11/18]
[Filed ARC 4247C (Notice ARC 4093C, IAB 10/24/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 4248C (Notice ARC 4082C, IAB 10/24/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 4377C (Notice ARC 4241C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]
[Filed ARC 4658C (Notice ARC 4445C, IAB 5/22/19), IAB 9/11/19, effective 10/16/19]
[Filed ARC 4714C (Notice ARC 4382C, IAB 4/10/19), IAB 10/23/19, effective 11/27/19]

[1] Effective date of 13.2(148,272C) delayed 70 days by the Administrative Rules Review Committee at its meeting held May 14, 1996.

CHAPTER 14
IOWA PHYSICIAN HEALTH COMMITTEE

653—14.1(272C) Iowa physician health committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the Iowa physician health committee, formerly known as the impaired physician review committee.

653—14.2(272C) Definitions.

"Board" means the board of medicine of the state of Iowa.

"Health contract" or *"contract"* means the written document executed by an applicant or licensee and the IPHC which establishes the terms for participation in the Iowa physician health program.

"Impairment" means an inability, or significant potential for inability, to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any mental or physical disorder or disability. For the purposes of this program, "impairment" does not include sexual dysfunction, sexual addiction, sexual compulsivity, paraphilia, or other sexual disorder.

"Initial Agreement" means the written document establishing the initial terms for participation in the Iowa physician health program.

"IPHC" or *"committee"* means the Iowa physician health committee.

"IPHP" or *"program"* means the Iowa physician health program.

"Participant" means an applicant or licensee who does any of the following: self-reports an impairment to the Iowa physician health program, is referred to the Iowa physician health program by the board pursuant to 653—14.11(272C), signs an initial agreement with the Iowa physician health committee, or signs a contract with the Iowa physician health committee.

"Referral by the board" means the board has determined, with or without having taken disciplinary action, that the applicant or licensee is an appropriate candidate for participation in the IPHP pursuant to 653—14.11(272C).

"Self-report" means an applicant's or a licensee's providing written notification to the IPHC that the applicant or the licensee has been, is, or may be impaired. Information related to an impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report upon the request of the applicant or licensee and authorization from the board and agreement by the IPHC.

[**ARC 8917B**, IAB 6/30/10, effective 8/4/10; **ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.3(272C) Purpose. The IPHC assists and monitors the recovery, rehabilitation, or maintenance of licensees who self-report impairments or are referred by the board pursuant to 653—14.11(272C) and, as necessary, notifies the board in the event of noncompliance with contract provisions. The IPHC is both an advocate for licensees' health and a means to protect the health and safety of the public.

[**ARC 8917B**, IAB 6/30/10, effective 8/4/10]

653—14.4(272C) Organization of the committee. The board shall appoint the members of the IPHC.

14.4(1) *Membership.* The membership of the IPHC includes, but is not limited to:

a. The executive director of the board or the director's designee from the board's staff;

b. One physician who has remained free of addiction for a period of no less than two years following successful completion of a board-approved recovery program, a board-ordered probation for alcohol or drug abuse, dependency, or addiction, or an IPHC contract;

c. One practitioner with expertise in substance abuse/addiction treatment programs;

d. One psychiatrist; and

e. One public member.

14.4(2) *Officers.* The IPHC shall elect a chairperson and a co-chairperson or a vice chairperson at the last meeting of each calendar year to begin serving a one-year term on January 1.

a. The chairperson and co-chairperson are responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including negotiation and execution of initial

agreements, contracts, and program descriptions and interim restrictions on practice on behalf of the committee. The IPHC retains authority to review all interim decisions at its discretion.

b. The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

14.4(3) *Terms.* Committee members, except the executive director, shall be appointed for three-year terms, for a maximum of three terms. Terms shall expire on December 31 of the third year of the term.
[**ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.5(272C) Eligibility. To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or potential impairment directly to the IPHP or be referred by the board for an impairment or potential impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

14.5(1) Participation in the program does not divest the board of its authority or jurisdiction over the participant. A participant with an impairment or potential impairment as defined at 653—14.2(272C) may retain eligibility to participate in the program if appropriate while subject to investigation or discipline by the board for matters other than the alleged impairment.

14.5(2) A participant may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

a. The participant provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the IPHC.

b. The participant fails to sign a contract when recommended by the IPHC.

c. The IPHC determines it will be unable to assist the participant.

14.5(3) The IPHC shall report to the board any knowledge of violations of administrative rules or statutes other than the impairment, including, but not limited to, competency concerns or sexual misconduct.
[**ARC 8917B**, IAB 6/30/10, effective 8/4/10; **ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.6(272C) Type of program. The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the participant. The committee, in consultation with an IPHC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment. The IPHC shall prepare a contract, to be signed by the participant, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein.
[**ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.7(272C) Terms of participation. A participant shall agree to comply with the terms for participation in the IPHP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

14.7(1) *Duration.* The length of time a participant may participate in the program shall be determined by the IPHC in accordance with the following:

a. Participation in the program for participants impaired as a result of alcohol or drug dependency or addiction is set at a minimum of five years. The IPHC may offer a contract with a shorter duration to a participant who can demonstrate successful participation in another state's physician health program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

b. Length of participation in the program for participants with impairments resulting from mental or physical disorders or disabilities will vary depending upon the recommendations provided by an approved evaluator and the determination of the IPHC following review of all relevant information.

14.7(2) *Noncompliance.* A participant is responsible for promptly notifying the IPHC of all instances of noncompliance including a relapse. Notification of noncompliance made to the IPHC by

the participant, any person responsible for monitoring or treating the participant, or another party shall result in the following:

a. First instance. Upon receiving notification of a first instance of significant noncompliance including, but not limited to, a relapse, the IPHC shall make a report to the board which identifies the participant by IPHP case number, describes the relevant terms of the participant's contract and the noncompliance, and includes the IPHC's recommendation as to whether the participant should remain in the program. Upon receiving the report, the board shall determine if formal disciplinary charges should be filed, pursuant to 653—subrule 23.1(12).

b. Second instance. Upon receiving notification of a second instance of significant noncompliance including, but not limited to, a relapse, the IPHC shall refer the case and the participant's identity to the board for a determination of whether formal disciplinary charges should be filed or other appropriate action taken. In its referral, the IPHC may make recommendations as to whether the participant should be allowed to remain in the program.

14.7(3) *Practice restrictions.* The IPHC may impose restrictions on the license to practice the applicable profession as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPHC determines, based on all relevant information, that the participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a participant is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that a participant refuses to agree to or comply with the restrictions established in the initial agreement or contract, the IPHC shall refer the participant to the board for appropriate action.

[**ARC 8917B**, IAB 6/30/10, effective 8/4/10; **ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.8(272C) Limitations.

14.8(1) The IPHC establishes the terms of and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPHC is not responsible for participants who fail to comply with the terms of the initial agreement or contract or who fail to otherwise successfully complete the IPHP.

14.8(2) Participation in the IPHP shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. A participant who violates a statute or administrative rule of the board which is unrelated to impairment, including, but not limited to, competency concerns or sexual misconduct, shall be referred to the board in accordance with these administrative rules for appropriate action.

[**ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.9(272C) Confidentiality. Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about applicants or licensees in the program shall not be disclosed except as provided in this rule.

14.9(1) The IPHC is authorized pursuant to Iowa Code section 272C.6(4) to communicate information about a current or former IPHP participant to the applicable regulatory authorities or impaired licensee programs in the state of Iowa and in any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice medicine or in which the participant seeks licensure. IPHP participants must report their participation to the applicable physician health program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

14.9(2) The IPHC is authorized to communicate information about an IPHP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

14.9(3) The IPHC is authorized to communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract as set forth in subrule 14.7(2). The IPHC may provide the board with a participant's IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against

a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing. The IPHC is also authorized to communicate information about an IPHP participant to the board in the event the participant is under investigation by the board.

14.9(4) The IPHC is authorized to communicate information about a current or former IPHP participant to the board if reliable information held by the IPHC reasonably indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

14.9(5) The IPHC shall file with the board a report on board-referred cases upon the licensee's successful completion of the program.

14.9(6) The IPHC shall maintain a participant's complete IPHP file for the ten-year period after a participant's contract has expired or is terminated. After that period, the Executive Summary and contract shall be retained.

[**ARC 8917B**, IAB 6/30/10, effective 8/4/10; **ARC 1188C**, IAB 11/27/13, effective 1/1/14]

653—14.10(28E) Authority for 28E agreements. The IPHC may enter into 28E agreements with other health professional licensing boards to evaluate, assist, and monitor impaired licensees from other health professions who self-report and to report to those professional licensing boards regarding the compliance of individual licensees. In the event of noncompliance, the licensee may be referred to the appropriate licensing board for appropriate disciplinary action. If the IPHC enters into a 28E agreement with another health professional licensing board, this chapter applies and the word "physician" shall be replaced with the word "licensee" for the purpose of interpreting this chapter.

653—14.11(272C) Board referrals to the Iowa physician health program.

14.11(1) *Eligibility for board referral to IPHP.* The board may refer to the IPHP a licensee or applicant for whom the following circumstances apply:

a. The applicant or licensee has a potential impairment as defined in rule 653—14.2(272C).

b. The board determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

NOTE: A licensee who is the subject of a formal board disciplinary order relating to an impairment must demonstrate a sufficient period of compliance with the disciplinary order before referral to the IPHP.

c. The IPHC determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

14.11(2) *Referral process.*

a. Determination of whether an applicant or licensee is appropriate for referral to the IPHP is in the sole discretion of the board. Upon the board's approval, a referral shall be made to the IPHP and board staff shall provide relevant information about the applicant or licensee to the IPHC.

b. The IPHC shall make a determination whether the applicant or licensee is an appropriate candidate for participation in the IPHP. Upon this determination, the IPHC shall offer the referred applicant or licensee a health contract which provides a detailed description of the goals of the program, the requirements for successful participation, and the applicant's or licensee's obligations therein. See 653—14.6(272C).

c. If the IPHC finds that the applicant or licensee is not an appropriate candidate for participation in the IPHP or if the applicant or licensee fails to sign the initial agreement or contract in the time period specified by the IPHC, the IPHC shall notify the board promptly.

d. When the referred applicant or licensee signs the contract, the IPHC shall notify the board.

e. Upon notification that the contract has been finalized for a participant who is the subject of a formal board disciplinary order relating to the impairment, the board shall file an order referring the licensee to the IPHP, and that order shall be a public record.

f. The IPHC shall notify the board upon the participant's successful completion of the program. The board may file an order recognizing the participant's successful completion of the program in cases where the referral was included in a public record. An order recognizing completion of the program shall be a public record.

g. Referral of an applicant or licensee by the board to the IPHP shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. Upon referral, the applicant or licensee shall be subject to the provisions of 653—Chapter 14. Specifically, the applicant or licensee shall be subject to board review and potential formal disciplinary action pursuant to subrule 14.7(2) for noncompliance with the provisions of the IPHP health contract.

14.11(3) *Investigation and disciplinary action on referrals.* Rescinded IAB 6/30/10, effective 8/4/10.

[**ARC 8917B**, IAB 6/30/10, effective 8/4/10; **ARC 1188C**, IAB 11/27/13, effective 1/1/14]

These rules are intended to implement Iowa Code section 272C.3 as amended by 2003 Iowa Acts, House File 641, section 6.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 2/14/02, Notice 11/28/01—published 3/6/02, effective 4/10/02]
[Filed 9/25/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]
[Filed 11/5/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]
[Filed ARC 8917B (Notice ARC 8751B, IAB 5/5/10), IAB 6/30/10, effective 8/4/10]
[Filed ARC 1188C (Notice ARC 0977C, IAB 8/21/13), IAB 11/27/13, effective 1/1/14]

CHAPTER 15
CHILD SUPPORT NONCOMPLIANCE

653—15.1(252J) Definitions. For the purpose of this chapter the following definitions shall apply.

"Act" means 1995 Iowa Acts, chapter 115, sections 1 to 9.

"Certificate" means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee.

"Child support unit" means the child support recovery unit of the Iowa department of human services.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by the Act.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

653—15.2(252J) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate from the child support unit. This rule shall apply in addition to the procedures set forth in the Act.

15.2(1) *Service of denial notice.* Notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

15.2(2) *Effective date of denial.* The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the licensee.

15.2(3) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the denial notice upon the licensee.

15.2(4) *Licensee responsible to inform board.* Licensees and applicants shall keep the board informed of all court actions, and all child support unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and withdrawal of certificates issued by the child support unit.

15.2(5) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

15.2(6) *Effect of filing in district court.* In the event a licensee files a timely district court action following service of a board denial notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

15.2(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the board's receipt of a withdrawal certificate.

653—15.3(252J) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate from the child support unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

15.3(1) *Service or revocation or suspension notice.* Revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

15.3(2) *Effective date of revocation or suspension.* The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

15.3(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

15.3(4) *Licensee responsible to inform board.* The licensee shall keep the board informed of all court actions and all child support recovery unit action taken under or in connection with the Act. Licensees shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the child support unit.

15.3(5) *Reinstatement following license suspension or revocation.* A licensee shall pay all board fees required for license renewal or license reinstatement before a license will be reinstated after the board has suspended a license pursuant to the Act.

15.3(6) *Effect of filing in district court.* In the event a licensee files a timely district court action pursuant to the Act and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension 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 suspension or revocation, 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.

15.3(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal certificate.

These rules are intended to implement Iowa Code chapter 252J.

[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]

CHAPTER 16
STUDENT LOAN DEFAULT OR NONCOMPLIANCE

653—16.1(261) Definitions. For the purpose of this chapter the following definitions shall apply:

"Act" means Iowa Code sections 261.121 to 261.127.

"Applicant" means an individual who is seeking the issuance of a license.

"Board" means the board of medicine.

"Certificate" means a document known as a certificate of noncompliance from the college student aid commission certifying that the named licensee is not in compliance with the terms of an agreement for payment of a student loan obligation.

"Commission" means the college student aid commission.

"Denial notice" means a board notification denying an application for the issuance or renewal of a license as required by the Act.

"License" means a license to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under Iowa Code chapters 148 and 148E.

"Licensee" means an individual to whom a license has been issued.

"Revocation or suspension notice" means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

"Withdrawal certificate" means a document known as a withdrawal of a certificate of noncompliance provided by the commission certifying that the certificate is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

653—16.2(261) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon receipt of a certificate from the commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127.

653—16.3(261) Service of denial notice. Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

16.3(1) *Effective date of denial.* The effective date of the denial of issuance or renewal of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

16.3(2) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the notice upon the licensee.

16.3(3) *Responsibility to inform board.* Applicants and licensees shall keep the board informed of all court actions and all commission actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and any withdrawal certificates issued by the commission.

16.3(4) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement shall be paid by applicants or licensees, and all continuing education requirements shall be met, before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

16.3(5) *Effect of filing in district court.* In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal 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 by the court.

16.3(6) *Final notification.* The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly provide

notification to the applicant or licensee when the license is issued or renewed following the board's receipt of a withdrawal certificate.

653—16.4(261) Suspension or revocation of a license. The board shall suspend or revoke a license upon receipt of a certificate from the commission according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

16.4(1) *Service of revocation or suspension notice.* Notice shall be served upon the licensee by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

16.4(2) *Effective date of revocation or suspension.* The effective date of the revocation or suspension of a license, as specified in the notice, shall be 60 days following service of the notice upon the licensee.

16.4(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the notice upon the licensee and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board's intention to revoke the license.

16.4(4) *Licensee/applicant responsible to inform board.* Licensees shall keep the board informed of all court actions and all commission actions taken under or in connection with the Act and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and any withdrawal certificates issued by the commission.

16.4(5) *Reinstatement following license suspension or revocation.* All board fees required for license renewal or license reinstatement shall be paid by licensees, and all continuing education requirements shall be met, before a license will be renewed or reinstated after the board has suspended a license pursuant to the Act and then in accordance with 653—Chapter 26.

16.4(6) *Effect of filing in district court.* In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the 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 by the court.

16.4(7) *Final notification.* The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of a withdrawal certificate.

653—16.5(261) Share information. Notwithstanding any statutory confidentiality provision, the board may share information with the commission through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under the Act.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

CHAPTER 17
LICENSURE OF ACUPUNCTURISTS

653—17.1(148E) Purpose. The licensure of acupuncturists is established to ensure that practitioners are qualified to provide Iowans with safe and healthful care. The provisions of Iowa Code chapters 147, 148E and 272C authorize the board of medicine to establish examination requirements for licensure; evaluate the credentials of applicants for licensure (147.2, 148E.3); grant licenses to qualified applicants (148E.2); institute continuing education requirements (272C.2); investigate complaints and reports alleging that licensed acupuncturists violated statutes and rules governing the practice of acupuncture (147.55, 148E.6); make available participation in the Iowa physician health program (272C.3); and discipline licensed acupuncturists found guilty of infractions as provided in state law and board rules (147.55, 148E.6).

653—17.2(148E) Scope of chapter. The rules in this chapter shall only apply to individuals licensed under Iowa Code chapter 148E. In accordance with Iowa Code section 148E.3, the rules in this chapter shall not apply to the following:

1. A person otherwise licensed by the state to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry who is exclusively engaged in the practice of the person's profession.
2. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board.

[**ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.3(148E) Definitions.

"Accreditation Commission for Acupuncture and Oriental Medicine" or *"ACAOM"* means the United States-based accreditation commission that certifies acupuncture and oriental medicine training programs and colleges. The ACAOM oversees all professional oriental medicine and acupuncture degree programs in the United States. The ACAOM was formerly known as the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

"Acupuncture" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Acupuncture needle" means a solid-core instrument including but not limited to acupuncture needles, dermal needles, intradermal needles, press tacks, plum blossom needles, prismatic needles, and disposable lancets.

"Acupuncture point" means a specific anatomical location on the human body that serves as the treatment site for the use of acupuncture.

"Applicant" means a person not otherwise authorized to practice acupuncture under Iowa Code section 148E.3 who applies to the board for a license.

"Ashi acupuncture point" means an acupuncture point that is located according to tenderness upon palpation. An ashi acupuncture point is also known as a trigger point.

"Board" means the board of medicine established in Iowa Code chapter 147.

"Committee" means the licensure committee of the board with oversight responsibility for administration of the licensure of acupuncturists.

"Department" means the Iowa department of public health.

"Disclosure sheet" means the written information licensed acupuncturists must provide to patients on initial contact.

"Disposable needles" means presterilized needles that are discarded after initial use pursuant to Iowa Code section 148E.5.

"License" means a license issued by the board pursuant to Iowa Code section 148E.2.

"Licensee" means a person holding a license to practice acupuncture issued by the board pursuant to Iowa Code chapter 148E.

"National Certification Commission for Acupuncture and Oriental Medicine" or *"NCCAOM"* means the United States-based commission that validates entry-level competency in the practice of acupuncture and oriental medicine through professional certification.

"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

"Service charge" means the amount charged by the board for making a service available online and is in addition to the actual fee for a service itself. For example, one who renews a license online will pay the license renewal fee and a service charge.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.4(147,148E) Eligibility for licensure.

17.4(1) *Eligibility requirements.* To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

a. Fulfill all the application requirements, as specified in 17.5(147,148E).

b. Hold current active status as a diplomate in NCCAOM or, after June 1, 2004, hold current active status as a diplomate in acupuncture or oriental medicine from NCCAOM.

c. Demonstrate sufficient knowledge of the English language to understand and be understood by patients and board and committee members.

(1) An applicant who passed the NCCAOM written and practical examination components in English may be presumed to have sufficient proficiency in English.

(2) An applicant who passed NCCAOM written or practical examination components in a language other than English shall pass the Test of Spoken English (TSE) or the Test of English as a Foreign Language (TOEFL) examinations administered by the Educational Testing Service. A passing score on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), a minimum overall score of 213 on the computer-administered TOEFL, or a minimum overall score of 79 on the Internet-based examination.

d. Successfully complete a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the standards of the Accreditation Commission for Acupuncture and Oriental Medicine.

e. Successfully complete a course in clean needle technique approved by the NCCAOM.

17.4(2) *Waiver or variance prohibited.* Provisions of this rule are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.5(147,148E) Application requirements.

17.5(1) *Application for licensure.* To apply for a license to practice acupuncture, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents, a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant;

b. Pay the nonrefundable initial application fee identified in 653—paragraph 8.2(2)*"a"*; and

c. Pay the fee identified in 653—paragraph 8.2(2)*"e"* for the evaluation of the fingerprint packet and the national criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

17.5(2) *Contents of the application form.* Each applicant shall submit the following information on the application form provided by the board:

a. The applicant's full legal name, date and place of birth, home address, mailing address, principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board;

b. A photograph of the applicant suitable for positive identification;

c. A chronology accounting for all time periods from the date the applicant entered an acupuncture and oriental medicine training program or college to the date of the application;

d. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice acupuncture, including license, certificate of registration or certification numbers, and date of issuance;

e. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Copies of the legal documents may be requested if needed during the review process;

f. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, acupuncture or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

g. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

h. The NCCAOM score report verification form submitted directly to the board by the NCCAOM;

i. An NCCAOM certificate that demonstrates that the applicant holds current active status as a diplomate in acupuncture or oriental medicine from the NCCAOM;

j. Proof of successful completion of a course in clean needle technique approved by the NCCAOM;

k. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

l. A description of the applicant's clinical acupuncture training, work experience and, where applicable, supporting documentation;

m. A copy of the applicant's acupuncture degree issued by an educational institution. If a copy of the acupuncture degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained an acupuncture degree from a specific educational institution;

n. A complete translation of any diploma not written in English. An official transcript, written in English and received directly from the educational institution, showing graduation from an acupuncture training program or an educational institution is a suitable alternative;

o. A sworn statement from an official of the educational institution certifying the date the applicant received the acupuncture degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained an acupuncture degree from a specific educational institution;

p. An official transcript sent directly from an acupuncture training program or an educational institution attended by the applicant and, if requested by the board, an English translation of the official transcript;

q. Proof of the applicant's proficiency in the English language, when the applicant has not passed the English version of the NCCAOM written and practical examinations;

r. Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board; and

s. A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

17.5(3) *Disclosure sheet.* Rescinded IAB 2/15/17, effective 3/22/17.

17.5(4) *Application cycle.* If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

a. To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee identified in 653—paragraph 8.2(2)*"b"* and shall update application materials if requested by the board. The period for requesting reactivation is limited to 30 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

b. Once the application reactivation period is expired, applicants must reapply and submit a new, nonrefundable initial application fee and a new application, including required documents and credentials.

17.5(5) *Applicant responsibilities.* An applicant for licensure to practice acupuncture bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information specified in 17.5(2);

b. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under 17.5(2) related to prior professional experience, education, training, examination scores, diplomate status, licensure or registration, and disciplinary history; and

c. Submitting English translations of documents in foreign languages bearing the affidavit of the translator certifying that the translation is a true and complete translation of the foreign language original. The applicant shall bear the expense of the translation.

17.5(6) *Licensure application review process.* The process below shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

a. An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial application fee.

b. After reviewing each application, staff shall notify the applicant about how to resolve any problems identified by the reviewer. An applicant shall provide additional information when requested by staff or the board.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may administratively grant the license. The staff may grant the license without having received a report on the applicant from the FBI.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall administratively grant the license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include but are not limited to: falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to issue the license administratively.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) If an applicant has not engaged in active practice in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

2. Successfully pass a competency evaluation approved by the board;

3. Successfully pass an examination approved by the board; or

4. Successfully complete a reentry to practice program or monitoring program approved by the board;

(4) Issue a license;

(5) Issue a license under certain terms and conditions or with certain restrictions;

(6) Request that the applicant withdraw the licensure application; or

(7) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) If an applicant has not engaged in active practice in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

2. Successfully pass a competency evaluation approved by the board;

3. Successfully pass an examination approved by the board; or

4. Successfully complete a reentry to practice program or monitoring program approved by the board;

(4) Issue a license;

(5) Issue a license under certain terms and conditions or with certain restrictions;

(6) Request that the applicant withdraw the licensure application; or

(7) Deny a license. The board may deny a license for any grounds on which the board may discipline a license.

17.5(7) *Grounds for denial of licensure.* The board, on the recommendation of the committee, may deny an application for licensure for any of the following reasons:

a. Failure to meet the requirements for licensure specified in rule 653—17.4(147,148E) as authorized by Iowa Code section 148E.2 or of this chapter of the board's rules.

b. Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55 and 148E.8 or in rule 653—17.12(147,148E,272C).

17.5(8) *Preliminary notice of denial.* Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

17.5(9) *Appeal procedure.* An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing and may provide additional written information or documents in support of licensure.

17.5(10) *Hearing.* If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with 653—25.30(17A).

a. License denial hearings are contested cases open to the public.

b. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.

c. Evidence supporting the denial of the license may be presented by an assistant attorney general.

d. 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.

e. The board, after a hearing on license denial, may grant or deny the application for licensure. The board shall state the reasons for its decision and may grant the license, grant the license with restrictions, or deny the license. The final decision is a public record.

f. Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, 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.

17.5(11) *Finality.* If an applicant does not appeal a preliminary notice of denial in accordance with 17.5(9), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

17.5(12) *Failure to pursue appeal.* If an applicant appeals a preliminary notice of denial in accordance with 17.5(9) but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.

17.5(13) *Waiver or variance prohibited.* Provisions of this rule are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.6(147,148E) Display of license and disclosure of information to patients.

17.6(1) *Display of license.* Licensed acupuncturists shall display the license issued by the board in a conspicuous place in their primary place of business.

17.6(2) *Distribution and retention of disclosure sheet.* Pursuant to Iowa Code section 148E.6, the licensee shall distribute a disclosure sheet on initial contact with patients and retain a copy, signed and dated by the patient, for a period of at least five years after termination of treatment. The disclosure sheet shall include the following:

a. The name, business address, and business telephone number of the acupuncturist.

b. A fee schedule.

c. A listing of the acupuncturist's education, experience, degrees, certificates, or credentials related to acupuncture awarded by professional acupuncture organizations and the length of time required to obtain the degrees or credentials and experience.

d. A statement indicating any license, certificate, or registration in a health care occupation that was revoked by any local, state, or national health care agency.

e. A statement that the acupuncturist is complying with statutes and rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist.

f. A statement indicating that the practice of acupuncture is regulated by the board.

g. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

[**ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.7(147,148E,272C) Biennial renewal of license required. Pursuant to Iowa Code section 148E.2, a license expires on October 31 of even-numbered years and can be renewed for the fee identified in 653—paragraph 8.2(2)*"c."* The applicant for renewal shall provide an NCCAOM certificate that demonstrates that the applicant holds current active status as a diplomate in acupuncture or oriental medicine from the NCCAOM.

17.7(1) *Expiration date.* Certificates of licensure to practice acupuncture shall expire on October 31 in even years.

17.7(2) *Prorated fees.* The first renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

17.7(3) *Renewal requirements and penalties for late renewal.* Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

a. When online renewal is used, the licensee must complete the online renewal prior to midnight on December 31 in order to ensure that the license will not become inactive. The license becomes inactive and invalid at 12:01 a.m. on January 1.

b. Upon receipt of the completed renewal application, staff shall administratively issue a license that expires on October 31 of even-numbered years. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration.

c. Every renewal shall be displayed in connection with the original certificate of licensure.

d. If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, a $50 penalty shall be assessed for renewal in the grace period, a period up until January 1 when the license becomes inactive if not renewed.

17.7(4) *Inactive license.* Failure of a licensee to renew by January 1 will result in invalidation of the license and the license will become inactive.

a. Licensees are prohibited from engaging in the practice of acupuncture once the license is lapsed.

b. Having an acupuncturist license in lapsed status does not preclude the board from taking disciplinary actions authorized in Iowa Code section 147.55 or 148E.8.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.8(147,272C) Reinstatement of an inactive license.

17.8(1) *Reinstatement requirements.* Licensees who allow their licenses to go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit upon forms provided by the board a completed application for reinstatement of a license to practice acupuncture. The application shall include the following information:

(1) The applicant's full legal name, date and place of birth, home address, mailing address, principal business address, and personal e-mail address regularly used by the applicant or licensee for correspondence with the board.

(2) Every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

(3) Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Copies of the legal documents may be requested if needed during the review process.

(4) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, acupuncture or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

(5) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provided patients with safe and healthful care.

(6) Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

(7) A chronology accounting for all time periods from the date of initial licensure.

(8) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

b. Submit a completed fingerprint packet to facilitate a national criminal history background check. The fee identified in 653—paragraph 8.2(2)*"e"* for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

c. Pay the reinstatement fee of $400 plus the fee identified in 653—paragraph 8.2(2)*"e"* for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

d. Provide an NCCAOM certificate which demonstrates that the applicant holds current active status as a diplomate in acupuncture or oriental medicine from the NCCAOM.

e. Meet any new requirements instituted since the license lapsed.

17.8(2) *Reinstatement restrictions.* Pursuant to Iowa Code section 272C.3(2)*"d,"* the committee may require an applicant who has not engaged in active practice in the past three years in any jurisdiction of the United States to meet any or all of the following requirements prior to reinstatement of an inactive license:

a. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

b. Successfully pass a competency evaluation approved by the board;

c. Successfully pass an examination approved by the board; or

d. Successfully complete a reentry to practice program or monitoring program approved by the board.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.9(272C) Continuing education requirements. Licensees shall demonstrate that they hold current active status as a diplomate from the NCCAOM. The NCCAOM requires 60 points of professional development activity every four years. Active NCCAOM certification satisfies the continuing education requirements established in Iowa Code section 272C.2.

[**ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.10(147,148E,272C) General provisions.

17.10(1) *Diagnostic and treatment modalities.* Diagnostic and treatment modalities used by licensees under this chapter may include one or more of the following acupunctural services:

a. The stimulation or piercing of the skin with an acupuncture needle for any of the following purposes:

(1) To evoke a therapeutic physiological response, either locally or distally to the area of insertion or stimulation.

(2) To relieve pain or treat the neuromusculoskeletal system.

(3) To stimulate ashi acupuncture points to relieve pain and dysfunction.

(4) To promote, maintain, and restore health and to prevent disease.

(5) To stimulate the body according to auricular, hand, nose, face, foot or scalp acupuncture therapy.

(6) To use acupuncture needles with or without the use of herbs, electric current, or application of heat.

b. The use of oriental medical diagnosis and treatment, including:

(1) Moxibustion, cupping, thermal methods, magnets, gua sha scraping techniques, acupatches, herbal poultices, hot and cold packs, electromagnetic wave therapy, light and color therapy, sound therapy, or therapy lasers.

(2) Massage, acupressure, reflexology, shiatsu and tui na massage, or manual stimulation, including stimulation by an instrument or mechanical device that does not pierce the skin.

(3) Herbal medicine and dietary supplements, including those of plant, mineral, animal, and nutraceutical origin.

c. Any other adjunctive service or procedure that is clinically appropriate based on the licensee's training as approved by NCCAOM or ACAOM.

17.10(2) *Use and disposal of needles.* A licensee shall use only presterilized, disposable needles and shall provide for the disposal of used needles in accordance with the requirements of the department.

17.10(3) *Standard of care.* A licensee shall be held to the same standard of care as persons licensed to practice medicine and surgery or osteopathic medicine and surgery. Pursuant to Iowa Code section

272C.3, any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care in the practice of acupuncture constitutes malpractice and is grounds for the revocation or suspension of a license to practice acupuncture in this state.

17.10(4) *Title.* An acupuncturist licensed under this title may use the words "licensed acupuncturist" or "L.Ac." to connote professional standing after the licensee's name in accordance with Iowa Code section 147.74(18).

17.10(5) *Change of contact information.* Licensees shall notify the board of changes in home address, address of the place of practice, home or practice telephone number, or personal e-mail address regularly used by the applicant or licensee for correspondence with the board within one month of the change.

17.10(6) *Delegation of responsibilities.* A licensee shall perform all aspects of acupuncture treatment that involve penetration of the skin of a patient. The licensee may delegate other aspects of treatment to staff and patients who are properly trained by the licensee. It is permissible for appropriately trained staff and patients to remove acupuncture needles from the patient's body. The licensee is responsible for establishing and maintaining written training standards for staff.

17.10(7) *Change of full legal name.* A licensee shall notify the board of any change in the licensee's full legal name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

17.10(8) *Deceased.* A licensee's file shall be closed and labeled "deceased" when the board receives a copy of the licensee's death certificate or other reliable information of the licensee's death.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.11(147,148E,272C) General disciplinary provisions. The board is authorized to take disciplinary action against any licensee who violates the provisions set forth in state law and administrative rules pertaining to the safe and healthful practice of acupuncture. This rule is not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

17.11(1) *Methods of discipline.* The board may impose any of the following disciplinary sanctions:

a. Revocation of a license;

b. Suspension of a license until further order of the board;

c. Nonrenewal of a license;

d. Restrict permanently or temporarily the performance of specific procedures, methods, acts or techniques;

e. Probation;

f. Additional or remedial education or training;

g. Reexamination;

h. Medical or physical evaluation, or alcohol or drug screening within a specific time frame at a facility or by a practitioner of the board's choice;

i. Civil penalties not to exceed $1,000;

j. Citations and warnings as necessary; and

k. Other sanctions allowed by law as deemed appropriate.

17.11(2) *Discretion of the board.* The board may consider the following factors when determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of Iowa a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

653—17.12(147,148E,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in 17.11(1) upon determining that a licensee is guilty of any of the following acts or offenses:

17.12(1) *Fraud in procuring a license.* Fraud in procuring a license is the deliberate distortion of facts or use of deceptive tactics in the application for licensure to practice acupuncture including, but not limited to:

a. Making false or misleading statements in obtaining or seeking to obtain licensure;

b. Failing to disclose by deliberate omission or concealment any information the board deems relevant to the safe and healthful practice of acupuncture pursuant to Iowa Code chapters 147 and 148E;

c. Misrepresenting any fact or deed to meet the application or eligibility requirements established by this chapter; or

d. Filing or attempting to file a false, forged or altered diploma, certificate, affidavit, translated or other official or certified document, including the application form, attesting to the applicant's eligibility for licensure to practice acupuncture in Iowa.

17.12(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

a. Substantial lack of knowledge or ability to discharge professional obligations within the scope of the acupuncturist's practice;

b. Substantial deviation by the licensee from the standards of learning or skill ordinarily possessed and applied by other acupuncturists when acting in the same or similar circumstances;

c. Failure by an acupuncturist to exercise in a substantial respect the degree of care which is ordinarily exercised by the average acupuncturist when acting in the same or similar circumstances; or

d. Willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of acupuncture.

17.12(3) *Fraud in the practice of acupuncture.* Fraud in the practice of acupuncture includes, but is not limited to, any misleading, deceptive, untrue or fraudulent representation in the practice of acupuncture, made orally or in writing, that is contrary to the acupuncturist's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare, and potentially injurious to another. Proof of actual injury need not be established.

17.12(4) *Unethical conduct.* The Code of Ethics (2008) prepared and approved by the NCCAOM shall be utilized by the board as guiding principles in the practice of acupuncture in this state. Unethical conduct in the practice of acupuncture includes, but is not limited to:

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

b. Accepting remuneration for referral of patients to other health care professionals;

c. Offering or providing remuneration for the referral of patients, excluding paid advertisements or marketing services;

d. Engaging in sexual activity or genital contact with a patient while acting or purporting to act within the scope of the acupuncture practice, whether or not the patient consented to the sexual activity or genital contact;

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

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

17.12(5) *Practice harmful to the public.* Practice harmful or detrimental to the public in the practice of acupuncture includes, but is not limited to:

a. Failing to possess and exercise the degree of skill, learning and care expected of a reasonable, prudent acupuncturist acting in the same or similar circumstances;

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

c. Prescribing, dispensing or administering any controlled substance or prescription medication for human use; or

d. Performing any treatment or healing procedure not authorized in Iowa Code chapter 148E or this chapter.

17.12(6) *Habitual intoxication or addiction.* Habitual intoxication or addiction to the use of drugs includes, but is not limited to, the inability to practice acupuncture with reasonable skill and safety as a result of the excessive use of alcohol, drugs, narcotics, chemicals or other substances on a continuing basis, or the excessive use of the same in a way which may impair the ability to practice acupuncture with reasonable skill and safety.

17.12(7) *Felony conviction.* A felony conviction related to the practice of acupuncture or that affects the ability to practice the profession includes, but is not limited to:

a. Any conviction for any public offense directly related to or associated with the practice of acupuncture that is classified as a felony under the statutes of any jurisdiction of the United States, the United States government, or another nation or its political subdivisions; or

b. Any conviction for a public offense affecting the ability to practice acupuncture that is classified as a felony under the statutes of any jurisdiction of the United States, the United States government, or another nation or its political subdivisions and that involves moral turpitude, civility, honesty, or morals.

A copy of the record of conviction or plea of guilty or nolo contendere shall be conclusive evidence of the felony conviction.

17.12(8) *Misrepresentation of scope of practice by licensees.* Misrepresentation of a licensee's scope of practice includes, but is not limited to, misleading, deceptive or untrue representations about competency, education, training or skill as a licensed acupuncturist or the ability to perform services not authorized under this chapter.

17.12(9) *False advertising.* False advertising is the use of fraudulent, deceptive or improbable statements in information provided to the public. False advertising includes, but is not limited to:

a. Unsubstantiated claims about the licensee's skills or abilities, the healing properties of acupuncture or specific techniques or treatments therein;

b. Presenting words, phrases, or figures which are misleading or likely to be misunderstood by the average person; or

c. Claiming extraordinary skills that are not recognized by the acupuncture profession.

17.12(10) *General grounds.* The board may also take disciplinary action against an acupuncturist for any of the following reasons:

a. Failure to comply with the provisions of Iowa Code chapter 148E or the applicable provisions of Iowa Code chapter 147, or the failure of an acupuncturist to comply with rules adopted by the board pursuant to Iowa Code chapter 148E;

b. Failure to notify the board of any adverse judgment or settlement of a malpractice claim or action within 30 days of the date of the judgment or settlement;

c. Failure to report to the board any acts or omissions of another acupuncturist authorized to practice in Iowa that would constitute grounds for discipline under 17.12(147,148E,272C) within 30 days of the date the acupuncturist initially became aware of the information;

d. Failure to comply with a subpoena issued by the board;

e. Failure to adhere to the disciplinary sanctions imposed upon the acupuncturist by the board; or

f. Violating any of the grounds for revocation or suspension of licensure listed in Iowa Code chapter 147 or 148E.

[**ARC 8707B**, IAB 5/5/10, effective 6/9/10; **ARC 2950C**, IAB 2/15/17, effective 3/22/17]

653—17.13(272C) Procedure for peer review. Rule 653—24.3(272C) shall apply to peer review procedures in matters related to licensed acupuncturists.

653—17.14(272C) Reporting duties and investigation of reports. 653—Chapters 22 and 24 shall apply to certain reporting responsibilities of licensed acupuncturists and the investigation of malpractice cases involving licensed acupuncturists.

653—17.15(272C) Complaints, immunities and privileged communications. 653—Chapter 24 shall apply to matters relating to licensed acupuncturists.

653—17.16(272C) Confidentiality of investigative files. 653—subrule 24.9(2) shall apply to investigative files relating to licensed acupuncturists.

653—17.17 to **17.28** Reserved.

653—17.29(17A,147,148E,272C) Disciplinary procedures. 653—Chapter 25 shall apply to disciplinary actions against licensed acupuncturists.

653—17.30(147,148E,272C) Waiver or variance prohibited. Fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.20, 147.55, 272C.3 to 272C.6, 272C.8 and 272C.9 and Iowa Code chapter 148E as amended by 2000 Iowa Acts, chapter 1053.

[Filed 1/10/94, Notice 11/24/93—published 2/2/94, effective 3/9/94]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed emergency 8/3/00 after Notice 6/28/00—published 8/23/00, effective 8/3/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]◊
[Filed 3/14/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]
[Filed 10/10/02, Notice 7/10/02—published 10/30/02, effective 12/4/02]
[Filed 2/2/04, Notice 12/24/03—published 3/3/04, effective 4/7/04]
[Filed 11/5/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]
[Filed 12/14/06, Notice 11/8/06—published 1/17/07, effective 2/21/07]
[Filed emergency 2/8/07 after Notice 1/3/07—published 2/28/07, effective 3/1/07]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]
[Filed ARC 8707B (Notice ARC 8524B, IAB 2/10/10), IAB 5/5/10, effective 6/9/10]
[Filed ARC 2950C (Notice ARC 2860C, IAB 12/7/16), IAB 2/15/17, effective 3/22/17]

◊ Two or more ARCs

CHAPTER 18
MILITARY SERVICE AND VETERAN RECIPROCITY

653—18.1(85GA,ch1116) Definitions. As used in this chapter:

"License" means a license issued by the board, including a permanent medical license, resident physician license, special physician license, temporary physician license or licensed acupuncturist license.

"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 who is requesting credit toward licensure that is subject to the jurisdiction of the board for military education, training, or service obtained or completed in military service including, but not limited to, a medical physician or surgeon, osteopathic physician or surgeon, or licensed acupuncturist.

"Provisional license" means a license that is issued by the board to a veteran who is licensed in another jurisdiction in which licensure requirements are not substantially equivalent to those required in Iowa and that will allow the veteran an opportunity to obtain additional experience or education required for licensure in Iowa. A provisional license may be issued 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.

"Veteran" means an individual who meets the definition of "veteran" in Iowa Code section 35.1(2).

[**ARC 1804C**, IAB 12/24/14, effective 1/28/15]

653—18.2(85GA,ch1116) 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.

18.2(1) The completed military service 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 with submission of an application for military service credit.

18.2(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.

18.2(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).

18.2(4) The applicant shall fully comply with all other requirements necessary for licensure in Iowa pursuant to 653—Chapter 9.

18.2(5) 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.

18.2(6) 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.

18.2(7) 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.

18.2(8) 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. There shall be no fees or costs assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

18.2(9) 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 application be placed on pending status. The withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.
[**ARC 1804C**, IAB 12/24/14, effective 1/28/15]

653—18.3(85GA,ch1116) Veteran reciprocity.

18.3(1) A veteran with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran must pass any examinations required for licensure to be eligible for licensure through reciprocity. A fully completed application for licensure submitted by a veteran under this subrule shall be given priority and shall be expedited.

18.3(2) An application for licensure by reciprocity 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. In addition, the applicant shall provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

18.3(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 veteran is licensed are substantially equivalent to the licensing requirements in Iowa. The board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, and postgraduate experiences.

18.3(4) The board shall promptly grant a license to the veteran if the veteran 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 malpractice history or criminal background.

18.3(5) If the board determines that the licensing requirements in the jurisdiction in which the veteran is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the veteran 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 malpractice history or criminal background, the following shall apply:

a. If a veteran has not passed the required examination(s) for licensure, the veteran may request that the application be placed in pending status.

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.

18.3(6) A veteran 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. There shall be no fees or costs assessed against the veteran in connection with a contested case conducted pursuant to this subrule.

[**ARC 1804C**, IAB 12/24/14, effective 1/28/15]

These rules are intended to implement Iowa Code chapters 147, 148, 148E, and 272C and 2014 Iowa Acts, chapter 1116, division VI.

[Filed ARC 1804C (Notice ARC 1632C, IAB 9/17/14), IAB 12/24/14, effective 1/28/15]

CHAPTER 19
PRESCRIBING PSYCHOLOGISTS

653—19.1(148,154B) Definitions—joint rule.

"APA" means the American Psychological Association.

"Applicant" means a psychologist applying for a conditional prescription certificate.

"Board" means the Iowa board of psychology.

"Board of medicine" means the Iowa board of medicine.

"Collaborating physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

"Conditional prescribing psychologist" means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

"Conditional prescription certificate" means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

"CSA registration" means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

"DEA registration" means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

"Joint rule" means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rule-making process.

"Mental disorder" means a disorder which is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases.

"Prescribing psychologist" means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

"Prescription certificate" means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

"Primary care physician" means a person licensed to practice medicine and surgery or osteopathic medicine in Iowa who is responsible for the ongoing medical care of a patient.

"Psychologist" means a person licensed to practice psychology in Iowa.

"Psychotropic medication" means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or the most recent version of the International Classification of Diseases. "Psychotropic medication" does not include narcotics.

"Supervising physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

"Training director" means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

"Training physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 653—19.2(148,154B). A

training physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.
[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.2(148,154B) Educational requirements for conditional prescription certificate—joint rule. An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program's didactic instruction.

19.2(1) *Degree.* An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours not including the practicum and shall include coursework in basic science, neuroscience, clinical medicine, pathological basis of disease, clinical pharmacology, psychopharmacology, and professional, ethical and legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. The date the degree is conferred must be within the five-year period immediately preceding the application for a conditional prescription certificate. A program must be designated by the APA at the time the degree is conferred.

19.2(2) *Clinical experience.* An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

a. *Scope.* At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

b. *Minimum experience.* The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

c. *Conflict of interest.* A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

d. *Milestones.* To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood

pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

e. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

f. Training documentation. The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

g. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

19.2(3) *Practicum.* An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

a. Scope. At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

b. Minimum number of hours. A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

c. Minimum number of patients. A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

d. Settings. At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

e. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

f. Milestones. To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

g. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

h. Training documentation. The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

i. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

19.2(4) *Examination.* A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized

by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.
[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.3(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule. A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

19.3(1) *Supervision plan.* Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

a. The proposed supervision plan must include the following:

(1) Conditional prescribing psychologist information. The plan must include the name, license number, address, telephone number, and email address of the supervisee.

(2) Supervising physician information. The plan must include the name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) Primary supervising physician. The plan must include a designation of the primary supervising physician.

(4) Period of supervision. The plan must include the beginning date of the supervision plan and estimated date of completion.

(5) Locations and settings. The plan must include a description of the locations and settings where and with whom supervision will occur.

(6) Scope of practice. The plan must include a description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) Release of information. The plan must include a provision requiring the conditional prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the conditional prescribing psychologist to share the patient's health information with the supervising physician.

(8) Consultation between the conditional prescribing psychologist and the supervising physician. The plan must include a provision requiring that the conditional prescribing psychologist consult with the supervising physician on a regular basis regarding a patient's psychotropic treatment plan and any potential complications. A conditional prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician objects on the basis of a contraindication.

(9) Consultation between the supervising physician and the primary care physician. The plan must include a provision requiring that the supervising physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

(10) Termination of the supervision plan. The plan must include a description of how the supervision plan may be terminated and the process for notifying affected patients.

(11) Signatures. The plan must include signatures of the psychologist and all supervising physicians.

b. A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervision plan are subject to board approval.

c. The board shall transmit all approved supervision plans and approved amendments to the board of medicine.

19.3(2) *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

19.3(3) *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

19.3(4) *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

a. *Children.* To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A pediatric practice,

(2) A child and adolescent practice, or

(3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

b. *Elderly patients.* To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

(1) A geriatric practice, or

(2) A general practice with patients across the lifespan including patients who are over 65 years of age.

c. *Serious medical conditions.* To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

19.3(5) *Completion of supervised practice.* A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

a. At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

(1) Supervision was provided in accordance with rules established by the board of medicine.

(2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 19.3(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 19.2(3)*"f"* sufficient to obtain a prescription certificate.

b. If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time

requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.
[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.4(148,154B) Prescribing—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.
2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.
3. A prescription shall identify the prescriber as a "psychologist certified to prescribe" and shall include the Iowa license number of the psychologist.
4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.
5. A psychologist shall not delegate prescriptive authority to any other person.
6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.
7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.
8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist's immediate family or household.
9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient's prescriptive profile using the Iowa prescription monitoring program.
10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient's obstetrician-gynecologist or the physician managing the patient's pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient's obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.
11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient's physician objects on the basis of a contraindication.
12. A psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician or collaborating physician objects on the basis of a contraindication.

[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.5(148,154B) Consultation with primary care physicians—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

19.5(1) *Requirement for a primary care physician.* A patient must have a designated primary care physician in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care physician, a psychologist shall refer the patient to a primary care physician prior to prescribing psychotropic medications to the patient. A

psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care physician.

19.5(2) *Requirement for a release.* A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the sharing of the patient's health information between the psychologist and the patient's primary care physician. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

19.5(3) *Cooperation and consultation with primary care physicians.* A psychologist shall contact each patient's primary care physician on at least a quarterly basis and shall contact the primary care physician to relay information regarding the care of a patient whenever the following occur:

a. A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care physician objects on the basis of a contraindication.

b. A psychologist is discontinuing or changing the dosage of a psychotropic medication.

c. A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.

d. A psychologist receives the results of laboratory tests related to the medical care of a patient.

e. A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.6(148,154B) Collaborative practice—joint rule.

19.6(1) A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

19.6(2) A collaborative practice agreement shall include the following:

a. *Prescribing psychologist information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

b. *Collaborating physician information.* The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

c. *Time period.* The time period covered by the agreement.

d. *Locations and settings.* The locations and settings where collaborative practice will occur.

e. *Collaboration.* A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

f. *Scope of practice.* The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic

medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

g. Clinical protocols, practice guidelines, and care plans. Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

h. Methods of communication. A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

i. Limitations on psychotropic medications. A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

j. Limitations on patient populations. A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

k. Release of information. A provision requiring the prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the prescribing psychologist to share the patient's health information with the collaborating physician.

l. Chart review. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

(1) Juvenile patients,
(2) Pregnant or lactating patients,
(3) Elderly patients,
(4) Patients with serious medical conditions, and
(5) All other patients.

m. Annual review. A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

n. Consultation between the prescribing psychologist and the collaborating physician. A provision requiring that the prescribing psychologist consult with the collaborating physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications. A prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the collaborating physician objects on the basis of a contraindication.

o. Consultation between the collaborating physician and the primary care physician. A provision requiring that the collaborating physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

p. Termination. A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

q. Signatures. Signatures of the prescribing psychologist and all collaborating physicians.

[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.7(148,154B) Complaints—joint rule. Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.8(148,154B) Joint waiver or variance—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

653—19.9(148,154B) Amendment—joint rule. Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rule-making process.
[**ARC 4249C**, IAB 1/16/19, effective 2/20/19]

These rules are intended to implement Iowa Code chapters 148 and 154B.

[Filed ARC 4249C (Notice ARC 3905C, IAB 8/1/18), IAB 1/16/19, effective 2/20/19]

CHAPTER 20
LICENSURE OF GENETIC COUNSELORS

653—20.1(148H) Purpose. The licensure of genetic counselors is established to ensure that practitioners are qualified to provide to Iowans genetic counseling with reasonable skill and safety. The provisions of Iowa Code chapters 147, 148H, and 272C authorize the board of medicine to establish eligibility requirements for licensure, evaluate the credentials of applicants for licensure, issue licenses to qualified applicants, institute continuing education requirements, investigate complaints and reports alleging that licensed genetic counselors have violated statutes and rules governing the practice of genetic counseling, make available participation in the Iowa physician health program, and discipline licensed genetic counselors found guilty of infractions as provided in state law and board rules.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.2(148H) Scope of chapter. This chapter shall not be construed to apply to any of the following:

1. A physician or surgeon or an osteopathic physician or surgeon licensed under Iowa Code chapter 148, a registered nurse or an advanced registered nurse practitioner licensed under Iowa Code chapter 152, a physician assistant licensed under Iowa Code chapter 148C, or other persons licensed under Iowa Code chapter 147 when acting within the scope of the person's profession and doing work of a nature consistent with the person's education and training.
2. A person who is certified by the American Board of Medical Genetics and Genomics as a doctor of philosophy and is not a genetic counselor licensed pursuant to Iowa Code chapter 148H.
3. A person employed as a genetic counselor by the federal government or an agency thereof if the person provides genetic counseling services solely under the direction and control of the entity by which the person is employed.
4. A genetic counseling intern.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.3(148H) Definitions.

"Active candidate status" means a person has met the requirements established by the American Board of Genetic Counseling to take the American Board of Genetic Counseling certification examination in general genetics and genetic counseling and has been granted this designation by the American Board of Genetic Counseling.

"American Board of Genetic Counseling" or *"ABGC"* means the United States-based commission, or its equivalent or successor organization, that validates entry-level competency in the practice of genetic counseling through professional certification.

"American Board of Medical Genetics and Genomics" or *"ABMGG"* means the United States-based commission, or its equivalent or successor organization, that validates entry-level competency in the practice of genetic counseling through professional certification.

"Board" means the board of medicine.

"Committee" means the licensure committee of the board.

"Genetic counseling" means the provision of services by a person who qualifies for a license under Iowa Code chapter 148H.

"Genetic counseling intern" means a student enrolled in a genetic counseling program accredited by the accreditation council for genetic counseling or the American Board of Medical Genetics and Genomics.

"Genetic counselor" means a person who is licensed under Iowa Code chapter 148H to engage in the practice of genetic counseling.

"Qualified supervisor" means any person who is a genetic counselor licensed under Iowa Code chapter 148H, a physician licensed under Iowa Code chapter 148, or an advanced registered nurse practitioner licensed under Iowa Code chapter 152.

"Supervision" means supervision by a qualified supervisor who has the overall responsibility of assessing the work of a provisional licensee, provided that an annual supervision contract signed by the

qualified supervisor and the provisional licensee is on file with both parties. "Supervision" does not require the qualified supervisor's presence during the performance of services.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.4(148H) Scope of practice. A person licensed pursuant to Iowa Code chapter 148H may do any of the following:

1. Obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic and medical conditions and diseases in a patient, the patient's offspring, and other family members.
2. Discuss the features, history, means of diagnosis, genetic and environmental factors, and management of risk for genetic and medical conditions and diseases.
3. Identify, order, and coordinate genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment of a patient.
4. Refer a patient to a specialty or subspecialty department as necessary for the purpose of collaborating on diagnosis and treatment involving multiple body systems and general medical management.
5. Integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic and medical conditions and diseases.
6. Explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results.
7. Evaluate the responses of a patient or patient's family to the condition or risk of recurrence and provide patient-centered genetic counseling and anticipatory guidance.
8. Identify and utilize community resources that provide medical, educational, financial, and psychosocial support and advocacy.
9. Provide written documentation of medical, genetic, and counseling information for families and health care professionals.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.5(148H) Titles used. A genetic counselor licensed under Iowa Code chapter 148H may use the words "genetic counselor" or "licensed genetic counselor" or the corresponding abbreviation "LGC" after the person's name. Persons who possess a provisional license shall add the designation "provisional licensed genetic counselor."
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.6(148H) Qualifications for licensure.

20.6(1) Each applicant for licensure under Iowa Code chapter 148H shall:

a. Submit an application form and supporting documentation as prescribed by the board.

b. Hold active certification as a genetic counselor by the American Board of Genetic Counseling, as a genetic counselor by the American Board of Medical Genetics and Genomics, or as a medical geneticist by the American Board of Medical Genetics and Genomics, or the successor to any of the aforementioned organizations.

20.6(2) A licensee shall maintain active certification as a genetic counselor by the American Board of Genetic Counseling, as a genetic counselor by the American Board of Medical Genetics and Genomics, or as a medical geneticist by the American Board of Medical Genetics and Genomics, or the successor to any of the aforementioned organizations.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.7(148H) Qualifications for provisional licensure. The board may issue a provisional license to an applicant who meets all of the requirements for licensure except for the certification component and who has been granted active candidate status by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.

20.7(1) The applicant shall submit a provisional license application form, proof of active candidate status, and supporting documentation prescribed by the board.

20.7(2) A provisional license shall expire and become inactive upon the earliest of the following:

a. Issuance of a license as a genetic counselor by the board.

b. Loss of active candidate status.

(1) A person holding a provisional license which is inactive due to loss of active candidate status may submit an application for reactivation of the provisional license upon demonstrating that active candidate status has been reestablished.

(2) An application for extension of a provisional license shall be signed by a qualified supervisor.

c. The date printed on the provisional license.

20.7(3) A person with a provisional license shall work at all times under the supervision of a qualified supervisor.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.8(147,148H) Application requirements.

20.8(1) *Application for licensure.* To apply for a license to practice genetic counseling, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents, a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant;

b. Pay the nonrefundable initial application fee identified in 653—paragraph 8.14(2)*"a"* and pay the fee identified in 653—paragraph 8.14(2)*"f"* for the evaluation of the fingerprint packet and the national criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

20.8(2) *Contents of the application form.* Each applicant shall submit the following information on the application form provided by the board:

a. The applicant's full legal name, date and place of birth, home address, mailing address, principal business address, and personal email address regularly used by the applicant or licensee for correspondence with the board;

b. A photograph of the applicant suitable for positive identification;

c. A chronology accounting for all time periods from the date the applicant entered a genetic counseling training program or educational institution to the date of the application;

d. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice genetic counseling, including license, certificate of registration or certification number and date of issuance;

e. Full disclosure of the applicant's involvement in civil litigation related to the practice of genetic counseling in any jurisdiction of the United States or other nations or territories. Copies of the legal documents may be requested if needed during the review process;

f. A statement disclosing and explaining any informal or nonpublic actions, such as letters of warning, letters of education, any confidential retraining, or any kind of confidential action taken toward a genetic counselor's certification or license which is not public discipline; warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

g. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

h. A letter sent directly from the ABGC or ABMGG to the board verifying the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or a letter sent directly from ABGC or ABMGG to the board verifying the applicant has been granted active candidate status for provisional licensure;

i. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of genetic counseling and provide patients with safe and healthful care; and

j. A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

20.8(3) *Application cycle.* If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

a. To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee identified in 653—paragraph 8.14(2)*"b"* and shall update application materials if requested by the board. The period for requesting reactivation is limited to 30 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

b. Once the application reactivation period is expired, an applicant must reapply and submit a new, nonrefundable initial application fee and a new application, including required documents and credentials.

20.8(4) *Applicant responsibilities.* An applicant for licensure to practice genetic counseling bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, national certifying organizations, health facilities, and educational institutions providing the information specified in subrule 20.8(2);

b. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under subrule 20.8(2) related to prior professional experience, education, training, active certification, licensure, and disciplinary history.

20.8(5) *Licensure application review process.* A process established by the board shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

a. An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial application fee.

b. After reviewing each application, staff shall notify the applicant about how to resolve any problems identified by the reviewer. An applicant shall provide additional information when requested by staff or the board.

c. If the final review indicates that the application is complete and that the application does not raise any questions or concerns regarding the applicant's qualifications for licensure, staff may administratively issue the license. Staff may issue the license without having received a report on the applicant from the FBI.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall administratively issue the license.

(2) If there are questions or concerns, an Iowa-licensed genetic counselor may be consulted.

(3) If any concern exists, staff shall refer the application to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to issue the license administratively.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, and after consultation with an Iowa-licensed genetic counselor, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) If an applicant has not engaged in the field of genetic counseling or precision medicine in the past three years in any jurisdiction of the United States, the board may, after consultation with an Iowa-licensed genetic counselor, require an applicant to:

1. Successfully complete board-approved continuing education or remediation;

2. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board;

3. If the genetic counselor is employed or has an offer of employment, successfully complete any other pathway as agreed upon by the board and the genetic counselor's employer;

(4) Issue a license;

(5) Issue a license under certain terms and conditions or with certain restrictions;

(6) Request that the applicant withdraw the licensure application; or

(7) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) If an applicant has not engaged in the field of genetic counseling or precision medicine in the past three years in any jurisdiction of the United States, the board may, after consultation with an Iowa-licensed genetic counselor, require an applicant to:

1. Successfully complete board-approved continuing education or remediation;

2. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board;

3. If the genetic counselor is employed or has an offer of employment, successfully complete any other pathway as agreed upon by the board and the genetic counselor's employer;

(4) Issue a license;

(5) Issue a license under certain terms and conditions or with certain restrictions;

(6) Request that the applicant withdraw the licensure application; or

(7) Deny a license. The board may deny a license for any grounds on which the board may discipline a license.

20.8(6) *Grounds for denial of licensure.* The board, on the recommendation of the committee, and after consultation with an Iowa-licensed genetic counselor, may deny an application for licensure for any of the following reasons:

a. Failure to meet the requirements for licensure specified in this chapter pursuant to Iowa Code section 148H.3.

b. Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55 and 148H.7 or in rule 653—20.20(147,148H,272C).

20.8(7) *Preliminary notice of denial.* Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

20.8(8) *Appeal procedure.* An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing and may provide additional written information or documents in support of licensure.

20.8(9) *Hearing.* If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with rule 653—25.30(17A).

a. License denial hearings are contested cases open to the public.

b. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.

c. Evidence supporting the denial of the license may be presented by an assistant attorney general.

d. 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.

e. The board, after a hearing on license denial, may issue or deny the license. The board shall state the reasons for its decision and may issue the license, issue the license with restrictions, or deny the license. The final decision is a public record.

f. Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, 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.

20.8(10) *Finality.* If an applicant does not appeal a preliminary notice of denial in accordance with subrule 20.8(8), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

20.8(11) *Failure to pursue appeal.* If an applicant appeals a preliminary notice of denial in accordance with subrule 20.8(8) but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.

20.8(12) *Waiver or variance prohibited.* Provisions of this rule are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter; **ARC 4468C**, IAB 6/5/19, effective 5/15/19; **ARC 4728C**, IAB 10/23/19, effective 11/27/19]

653—20.9(147,148H) Display of license and notification required to change the board's data system.

20.9(1) *Display of license.* Licensed genetic counselors shall display the license issued by the board in a conspicuous place in their primary place of business.

20.9(2) *Change of contact information.* Licensees shall notify the board within one month of a change in home address, address of the place of practice, home or practice telephone number, or personal email address regularly used by the applicant or licensee for correspondence with the board.

20.9(3) *Change of full legal name.* A licensee shall notify the board of any change in the licensee's full legal name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

20.9(4) *Deceased.* A licensee's file shall be closed and labeled "deceased" when the board receives a copy of the licensee's death certificate or other reliable information of the licensee's death.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.10(147,148H,272C) Biennial renewal of license required. Pursuant to Iowa Code section 148H.3, a license expires on October 31 of odd-numbered years and can be renewed for the fee identified in 653—paragraph 8.14(2)*"c."*

20.10(1) The applicant for renewal shall provide:

a. A renewal application provided by the board.

b. A letter sent directly from the ABGC or ABMGG to the board verifying that the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or a

letter sent directly from ABGC or ABMGG to the board verifying the applicant has been granted active candidate status for provisional licensure.

c. Satisfactory evidence to the board that in the period since the license was issued or last renewed, the applicant has completed 30 hours of National Society of Genetic Counselors or ABMGG continuing education units as approved by the board.

20.10(2) *Expiration date.* Certificates of licensure to practice genetic counseling shall expire on October 31 in odd years.

20.10(3) *Prorated fees.* The first renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

20.10(4) *Renewal requirements and penalties for late renewal.* Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

a. When online renewal is used, the licensee must complete the online renewal prior to midnight on December 31 in order to ensure that the license will not become inactive. The license becomes inactive and invalid at 12:01 a.m. on January 1.

b. Upon receipt of the completed renewal application, staff shall administratively issue a license that expires on October 31 of odd-numbered years. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration.

c. Every renewal shall be displayed in connection with the original certificate of licensure.

d. If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, a penalty fee identified in 653—paragraph 8.14(2)*"d"* shall be assessed for renewal in the grace period, a period up until January 1 when the license becomes inactive if not renewed.

20.10(5) *Inactive license.* Failure of a licensee to renew by January 1 will result in invalidation of the license, and the license will become inactive.

a. Licensees are prohibited from engaging in the practice of genetic counseling once the license is inactive.

b. Having a genetic counselor license in inactive status does not preclude the board from taking disciplinary actions authorized in Iowa Code section 147.55 or 148H.7.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter; **ARC 4468C**, IAB 6/5/19, effective 5/15/19; **ARC 4728C**, IAB 10/23/19, effective 11/27/19]

653—20.11(147,272C) Reinstatement of an inactive license.

20.11(1) *Reinstatement requirements.* Licensees who allow their licenses to go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit upon forms provided by the board a completed application for reinstatement of a license to practice genetic counseling. The application shall include the following information:

(1) The applicant's full legal name, date and place of birth, home address, mailing address, principal business address, and personal email address regularly used by the applicant or licensee for correspondence with the board.

(2) Every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

(3) Full disclosure of the applicant's involvement in civil litigation related to the practice of genetic counseling in any jurisdiction of the United States or other nations or territories. Copies of the legal documents may be requested if needed during the review process.

(4) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority; an educational institution; a training or research program; or a health facility in any jurisdiction.

(5) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

(6) Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

(7) A chronology accounting for all time periods from the date of initial licensure.

(8) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

b. Submit a completed fingerprint packet to facilitate a national criminal history background check. The fee identified in 653—paragraph 8.14(2)*"f"* for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

c. Pay the reinstatement fee identified in 653—paragraph 8.14(2)*"g"* plus the fee identified in 653—paragraph 8.14(2)*"f"* for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

d. A letter sent directly from the ABGC or ABMGG to the board verifying the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or a letter sent directly from the ABGC or ABMGG to the board verifying the applicant has been granted active candidate status for provisional licensure.

e. Meet any new requirements instituted since the license lapsed.

20.11(2) *Reinstatement for an applicant who has been out of practice for three years.* If an applicant for reinstatement has not engaged in the field of genetic counseling or precision medicine in the past three years in any jurisdiction of the United States, the board may, after consultation with an Iowa-licensed genetic counselor, require an applicant to:

a. Successfully complete board-approved continuing education or remediation.

b. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board.

c. Successfully complete any other pathway as agreed upon by the board.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter; **ARC 4468C**, IAB 6/5/19, effective 5/15/19; **ARC 4728C**, IAB 10/23/19, effective 11/27/19]

653—20.12(272C) Code of ethics. The NSGC Code of Ethics prepared and approved by the National Society of Genetic Counselors shall be utilized by the board as guiding principles in the practice of genetic counseling in this state.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.13(272C) Nonpayment of state debt. 653—Chapter 12 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.14(272C) Standards of practice—office practices. Rule 653—13.7(147,148,272C) shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.15(272C) Iowa physician health committee. 653—Chapter 14 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.16(272C) Child support noncompliance. 653—Chapter 15 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.17(272C) Student loan default or noncompliance. 653—Chapter 16 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.18(272C) Military service and veteran reciprocity. 653—Chapter 18 shall apply to licensed genetic counselors.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.19(272C) Mandatory reporting. 653—Chapter 22 shall apply to licensed genetic counselors.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.20(147,148H,272C) Grounds for discipline of genetic counselors. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148H, or 272C or the rules promulgated thereunder. These grounds for discipline apply to genetic counselors. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), when the board determines that the licensee is guilty of any of the following acts or offenses:

20.20(1) Violating any of the grounds for revocation or suspension of a license as listed in Iowa Code section 147.55, 148H.7, or 272C.10.

20.20(2) Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

a. Willful or repeated gross malpractice;

b. Willful or gross negligence;

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

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

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

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

20.20(3) Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of the genetic counselor to possess and exercise that degree of skill, learning, and care expected of a reasonable, prudent genetic counselor acting in the same or similar circumstances in this state, or when a genetic counselor is unable to practice genetic counseling with reasonable skill and safety as a result of mental or physical impairment, or chemical abuse.

20.20(4) Unprofessional conduct. Engaging in unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice, or good morals, whether the act is committed in the scope of the licensee's practice or otherwise, and whether the act is committed in this state or elsewhere; or a violation of the principles of ethics applicable to genetic counselors.

20.20(5) Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, a genetic counselor engaging in conduct set forth in 653—subrule 13.7(4) (sexual conduct) or 13.7(6) (sexual harassment) as interpreted by the board.

20.20(6) Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals, or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

20.20(7) Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological, or mental condition which may impair a genetic counselor's ability to practice the profession with reasonable skill and safety. Being adjudicated mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

20.20(8) Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory, or jurisdiction, as defined in Iowa Code section 148.6(2)*"b."*

20.20(9) Violation of the laws or rules governing the practice of genetic counseling in this state, another state, the United States, or any country, territory, or jurisdiction. Violation of the laws or rules governing the practice of genetic counseling includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148H, or 272C or any other state or federal laws governing the practice of genetic counseling.

20.20(10) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

20.20(11) Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

20.20(12) Failure to comply with an evaluation order under Iowa Code section 272C.9(1).

20.20(13) Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of genetic counseling. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of genetic counseling includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a genetic counselor in the practice of genetic counseling.

20.20(14) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice genetic counseling in this state, and includes false representations of material fact, either by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for license in this state.

20.20(15) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive, or untrue representations as to the genetic counselor's competency to perform professional services for which the licensee is not qualified to perform by education, training, or experience.

20.20(16) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making known to the public information which is false, deceptive, misleading, or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

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

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

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

d. Extravagant claims or claims of extraordinary skill not recognized by the profession of genetic counseling.

20.20(17) Obtaining any fee by fraud or misrepresentation.

20.20(18) Acceptance of remuneration for referral of a patient to other health professions in violation of the law or National Society of Genetic Counselors Code of Ethics.

20.20(19) Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

20.20(20) Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of genetic counseling.

20.20(21) Failure to report disciplinary action. Failure to report a license revocation, suspension, or other disciplinary action taken against a licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory, or other jurisdiction, within 30 days of final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

20.20(22) Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of genetic counseling entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

20.20(23) Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

20.20(24) Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6.

20.20(25) Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or a drug or alcohol screening.

20.20(26) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

20.20(27) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and rule 653—16.2(261).

20.20(28) Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records.

20.20(29) Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and rule 653—24.2(17A,147,148,272C).

20.20(30) Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

20.20(31) Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one has been granted.

20.20(32) Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by the board staff or within the extension of time if one has been granted.

20.20(33) Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 653—Chapter 12.

20.20(34) Failure to file with the board a written report and a copy of the hospital disciplinary action within 30 days of any hospital disciplinary action or the licensee's voluntary action to avoid a hospital disciplinary action, as required by rule 653—22.5(272C).

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.21(272C) Complaints and investigations. 653—Chapter 24 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.22(272C) Contested case proceedings. 653—Chapter 25 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.23(272C) Reinstatement after disciplinary action. 653—Chapter 26 shall apply to licensed genetic counselors.

[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.24(148H,272C) Surrender of license to the board.

20.24(1) A genetic counselor whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the board shall promptly surrender the original license to the board.

20.24(2) A genetic counselor whose ABGC certification has lapsed or whose certification has been revoked by the ABGC shall surrender the genetic counselor's license to the board.

20.24(3) A provisional licensee who loses active candidate status with the ABGC must immediately cease the practice of genetic counseling until the provisional licensee obtains an extension of the provisional license or obtains a new provisional license.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.25(147,148H,272C) Waiver or variance prohibited. Fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.
[**ARC 4339C**, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

These rules are intended to implement Iowa Code chapters 147, 148, 148H, and 272C.

[Filed ARC 4339C (Notice ARC 4095C, IAB 10/24/18), IAB 3/13/19, effective 4/17/19][1]
[Filed Emergency ARC 4468C, IAB 6/5/19, effective 5/15/19]
[Filed ARC 4728C (Notice ARC 4477C, IAB 6/5/19), IAB 10/23/19, effective 11/27/19]

[1] April 17, 2019, effective date of Chapter 20 [ARC 4339C] delayed 70 days by the Administrative Rules Review Committee at its meeting held April 5, 2019; delay lifted at the meeting held May 14, 2019.

CHAPTER 21
PHYSICIAN SUPERVISION OF A PHYSICIAN ASSISTANT

653—21.1(148,272C) Ineligibility determinants. A physician with an active permanent, special, or temporary Iowa license who is actively engaged in the practice of medicine in Iowa may supervise a physician assistant. A physician is ineligible to supervise a physician assistant for any of the following reasons:

21.1(1) The physician does not hold an active, permanent, special or temporary Iowa medical license.

21.1(2) The physician is subject to a disciplinary order of the board that restricts or rescinds the physician's authority to supervise a physician assistant. The physician may supervise a physician assistant to the extent that the order allows.

21.1(3) The physician does not have a written supervisory agreement in place with each physician assistant supervised by the physician.

[**ARC 3264C**, IAB 8/16/17, effective 9/20/17]

653—21.2(148,272C) Exemptions from this chapter. This chapter shall not apply to the following:

21.2(1) A physician working in a federal facility or under federal authority when the provisions of this chapter conflict with federal regulations.

21.2(2) A physician who supervises a physician assistant providing medical care created by an emergency or a state or local disaster pursuant to Iowa Code section 148C.4 as amended by 2003 Iowa Acts, chapter 93, section 10.

653—21.3(148) Board notification. A physician who supervises a physician assistant shall notify the board of the supervisory relationship within 60 days of the provision of initial supervision and at the time of the physician's license renewal.

[**ARC 3264C**, IAB 8/16/17, effective 9/20/17]

653—21.4(148,272C) Supervisory agreements. Each physician who supervises a physician assistant shall establish a written supervisory agreement prior to supervising a physician assistant. A sample supervisory agreement form is available from the board. The purpose of the supervisory agreement is to define the nature and extent of the supervisory relationship and the expectations of each party. The supervisory agreement shall take into account the physician assistant's demonstrated skills, training and experience, proximity of the supervising physician to the physician assistant, and the nature and scope of the medical practice. The supervising physician shall maintain a copy of the supervisory agreement and provide a copy of the agreement to the board upon request. The supervisory agreement shall, at a minimum, address the following provisions.

21.4(1) *Review of requirements.* The supervisory agreement shall include a provision which ensures that the supervising physician and the physician assistant review all of the requirements of physician assistant licensure, practice, supervision, and delegation of medical services as set forth in Iowa Code section 148.13 and chapter 148C, this chapter, and 645—Chapters 326 to 329.

21.4(2) *Assessment of education, training, skills, and experience.* The supervisory agreement shall include a provision which ensures that each supervising physician assesses the education, training, skills, and relevant experience of the physician assistant prior to providing supervision. Each supervising physician and physician assistant shall ensure that the other party has the appropriate education, training, skills, and relevant experience necessary to successfully collaborate on patient care delivered by the team. Thereafter, each supervising physician shall regularly evaluate the clinical judgment, skills, performance and patient care of the physician assistant and shall provide appropriate feedback to the physician assistant.

21.4(3) *Delegated services.* The supervisory agreement shall include a provision which addresses the services the supervising physician delegates to the physician assistant. The medical services and medical tasks delegated to and provided by the physician assistant shall be in compliance with 645—subrule 327.1(1). All delegated medical services shall be within the scope of practice of the

supervising physician and the physician assistant. The supervising physician and the physician assistant shall have the education, training, skills, and relevant experience necessary to perform the delegated services prior to delegation.

21.4(4) *Communication.* The supervisory agreement shall include a provision which sets forth expectations for communication. Each supervising physician and physician assistant shall communicate about and consult on patient complaints, medical problems, complications, emergencies, and patient referrals as indicated by the clinical condition of the patient. The supervising physician shall be available for timely consultation with the physician assistant, either in person or by telephonic or other electronic means. The supervisory agreement shall also include a provision which ensures that each supervising physician and physician assistant conduct ongoing discussions and evaluation of the supervisory agreement, including supervision; expectations for both parties; assessment of education, training, skills, and relevant experience; review of delegated services; review of the medical services provided by the physician assistant; and the types of cases and situations when the supervising physician expects to be consulted.

21.4(5) *Chart review.* The supervisory agreement shall include a provision which sets forth the plan for completing and documenting chart reviews. Documentation may include, but is not limited to, the supervising physician's placing the supervising physician's signature or initials on the charts reviewed. Each supervising physician shall ensure that an ongoing review of a representative sample of the physician assistant's patient charts encompassing the scope of the physician assistant's practice provided under the physician's supervision occurs and that the findings of the review are discussed with the physician assistant.

21.4(6) *Remote medical site.* "Remote medical site" means a medical clinic for ambulatory patients which is away from the main practice location of the supervising physician and in which the supervising physician is present less than 50 percent of the time when the remote medical site is open. "Remote medical site" will not apply to nursing homes, patient homes, hospital outpatient departments, outreach clinics, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility). The supervisory agreement shall include a provision which ensures that the supervising physician visits the remote medical site, or communicates with a physician assistant at the remote medical site via electronic communications, at least every two weeks to provide additional medical direction, medical services and consultation specific to the medical services provided at the remote medical site. For purposes of this subrule, communication may consist of, but shall not be limited to, in-person meetings or two-way, interactive communication directly between the supervising physician and the physician assistant via the telephone, secure messaging, electronic mail, or chart review. The supervisory agreement shall also include a provision which ensures that at least one supervising physician meets in person, and documents the meeting, with the physician assistant at the remote medical site at least once every six months to evaluate and discuss the medical facilities, resources, and medical services provided at the remote medical site. The board shall only grant a waiver or variance of this provision if substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in this rule.

21.4(7) *Alternate supervision.* The supervisory agreement shall include a provision which sets forth the expectations and plan for alternate supervision. If the supervising physician will not be available for any reason, an alternate supervising physician must be available to ensure continuity of supervision. The supervising physician will ensure that the alternate supervising physician is available for a timely consultation and will ensure that the physician assistant is notified of the means by which to reach the alternate supervising physician. The physician assistant may not practice if supervision is unavailable, except as otherwise provided in Iowa Code chapter 148C or 645—Chapters 326 to 329.

[**ARC 3264C**, IAB 8/16/17, effective 9/20/17; **ARC 4213C**, IAB 1/2/19, effective 2/6/19]

653—21.5(148,272C) Grounds for discipline. A physician may be subject to disciplinary action for supervising a physician assistant in violation of these rules or the rules found in 653—Chapter 23 or 645—Chapters 326 and 327, which relate to duties and responsibilities for physician supervision of physician assistants. Grounds for discipline also include:

21.5(1) The physician supervises a physician assistant when the physician does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized.

21.5(2) A physician supervises more than five physician assistants at the same time.

21.5(3) The physician fails to ensure that the physician assistant is adequately supervised, including being available in person or by telecommunication to respond to the physician assistant.

21.5(4) The physician fails to adequately direct and supervise a physician assistant or fails to comply with the minimum standards of supervision in accordance with this chapter, Iowa Code section 148.13 and chapter 148C, and 645—Chapters 326 to 329.

[**ARC 0870C**, IAB 7/24/13, effective 8/28/13; **ARC 2532C**, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter; **ARC 3264C**, IAB 8/16/17, effective 9/20/17]

653—21.6(148,272C) Disciplinary sanction. The board may restrict or rescind a physician's authority to supervise a physician assistant as part of a disciplinary sanction following a contested case proceeding, if the reason for the disciplinary action impacts the ability of the physician to supervise a physician assistant. The board shall notify the board of physician assistants when it takes a disciplinary action against a physician's license that affects the physician's authority to supervise a physician assistant.

[**ARC 2532C**, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter; **ARC 3264C**, IAB 8/16/17, effective 9/20/17]

653—21.7(148,272C) Communication with physician assistant supervisees. The physician shall notify all physician assistant supervisees within one workday upon receiving disciplinary action from the board or any other change in status that affects the physician's eligibility to supervise a physician assistant.

[**ARC 2532C**, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter; **ARC 3264C**, IAB 8/16/17, effective 9/20/17]

653—21.8(17A,147,148,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

[**ARC 2532C**, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter; **ARC 3264C**, IAB 8/16/17, effective 9/20/17]

These rules are intended to implement Iowa Code sections 148.13 and 272C.3.

[Filed 1/4/89, Notice 11/16/88—published 1/25/89, effective 3/1/89][1][2][3]
[Filed 8/31/89, Notice 5/31/89—published 9/20/89, effective 10/25/89]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96][4]
[Filed emergency 10/4/96—published 10/23/96, effective 10/4/96]
[Filed 9/29/00, Notice 8/23/00—published 10/18/00, effective 11/22/00]
[Filed 12/4/03, Notice 8/20/03—published 12/24/03, effective 1/28/04][5]
[Filed emergency 3/9/04—published 3/31/04, effective 3/9/04]
[Filed ARC 0870C (Notice ARC 0692C, IAB 4/17/13), IAB 7/24/13, effective 8/28/13]
[Filed ARC 2532C (Notice ARC 2372C, IAB 1/20/16), IAB 5/11/16, effective 6/15/16][6]
[Filed ARC 3264C (Notice ARC 3069C, IAB 5/24/17), IAB 8/16/17, effective 9/20/17]
[Filed ARC 4213C (Notice ARC 3992C, IAB 9/12/18), IAB 1/2/19, effective 2/6/19]

1 Effective date of 3/1/89 delayed 70 days by Administrative Rules Review Committee at its February 13, 1989, meeting.

2 Effective date of 3/1/89 delayed until adjournment of the 1990 Session of the General Assembly at its May 9, 1989, meeting.

3 Delay until adjournment of the 1990 G.A. lifted by the Administrative Rules Review Committee at its August 3, 1989, meeting which allowed the rules to become effective August 4, 1989.

4 Effective date of 4/17/96 delayed 70 days by the Administrative Rules Review Committee at its meeting held April 16, 1996. Effective date delayed until adjournment of the 1997 General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 1996.

5 Effective date of 1/28/04 delayed 70 days by the Administrative Rules Review Committee at its January 6, 2004, meeting; at its meeting held March 8, 2004, the Committee lifted the delay, effective March 9, 2004.

6 Amendments to ch 21 in ARC 2532C, which included the renumbering of 21.4 to 21.7 as 21.5 to 21.8 (Item 1), the adoption of new 21.4 (Item 2), and the amendment to the implementation sentence (Item 3), rescinded by 2017 Iowa Acts, House File 591, section 2, paragraph *"a,"* on 4/12/17 and, pursuant to paragraph *"b,"* prior language restored IAC Supplement 5/10/17.

CHAPTER 22
MANDATORY REPORTING
[Prior to 7/19/06, see 653—Chapter 12]

653—22.1(272C) Mandatory reporting—judgments or settlements. Each licensee, including a licensee holding an inactive license, shall report to the board every adverse judgment and every settlement of a claim against the licensee in a malpractice action to which the licensee is a party. The report, together with a copy of the judgment or settlement, must be filed with the board within 30 days from the date of said judgment or settlement. Failure to report judgments or settlements in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

653—22.2(272C) Mandatory reporting—wrongful acts or omissions.

22.2(1) *Definitions.* For the purposes of this rule, the following definitions apply:

"Knowledge" means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

"Reportable conduct" means wrongful acts or omissions that are grounds for license revocation or suspension under these rules or that otherwise constitute negligence, careless acts or omissions that demonstrate a licensee's inability to practice medicine competently, safely, or within the bounds of medical ethics, pursuant to Iowa Code sections 272C.3(2) and 272C.4(6) and 653—Chapter 23.

22.2(2) *Reporting requirement.* A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct; the date, time, place and circumstances in which the conduct occurred; and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. A physician is not required to report confidential communication obtained from a physician in the course and as a result of a physician-patient relationship or when a state or federal statute prohibits such disclosure.

e. Failure to report a wrongful act or omission in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

f. A licensee shall not be civilly liable as a result of filing a report with the board so long as such report is not made with malice.

653—22.3(272C) Mandatory reporting—disciplinary action in another jurisdiction. Each licensee, including a licensee holding an inactive license, shall report to the board every license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction. The report must be filed with the board within 30 days from the date of the action against the physician's license. Failure to report such disciplinary action in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee.

653—22.4(272C) Mandatory reporting—child abuse and dependent adult abuse. Each licensee shall report child abuse and dependent adult abuse as required by state and federal law. Knowingly and willfully failing to report child abuse and dependent adult abuse as required by state and federal law in accordance with this rule may be grounds for disciplinary action against the licensee.

653—22.5(272C) Mandatory reporting—hospital disciplinary action. Each licensee, including a licensee holding an inactive license, shall file with the board a written report describing any disciplinary

action taken by a hospital for reasons relating to the physician's professional competence or conduct which results in a limitation, restriction, suspension, revocation, relinquishment or nonrenewal of the licensee's hospital privileges or any voluntary limitation, restriction, suspension, revocation, relinquishment or nonrenewal of the licensee's hospital privileges to avoid an investigation or other hospital disciplinary action. A licensee is not required to report a limitation, restriction, suspension, revocation, relinquishment or nonrenewal of the licensee's privileges of fewer than 10 days. A licensee is not required to report a voluntary, nondisciplinary limitation or relinquishment of hospital privileges upon the election of the licensee to narrow or change the nature of the licensee's medical practice for reasons not related to competency or conduct. The written report and a copy of the hospital disciplinary action or the licensee's voluntary action must be filed with the board within 30 days of the date of the action. Failure to file the written report and a copy of the action in accordance with the requirements of this rule may constitute a basis for action against the licensee. Reports shall be maintained by the board in accordance with Iowa Code section 272C.6, subsection 4.

[**ARC 0532C**, IAB 12/26/12, effective 1/30/13]

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 10/10/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83[1]]
[Filed 3/9/84, Notice 1/18/84—published 3/28/84, effective 5/2/84]
[Filed 10/19/84, Notice 8/29/84—published 11/7/84, effective 12/12/84[2]]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 10/28/88, Notice 6/15/88—published 11/16/88, effective 12/21/88]
[Filed 7/21/89, Notice 5/17/89—published 8/9/89, effective 9/13/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 11/3/94, Notice 9/28/94—published 11/23/94, effective 12/28/94]
[Filed 12/14/95, Notice 8/30/95—published 1/3/96, effective 2/7/96]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 2/2/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]
[Filed 6/12/98, Notice 4/22/98—published 7/1/98, effective 8/5/98]
[Filed 2/5/99, Notice 12/2/98—published 2/24/99, effective 3/31/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 6/6/02, Notice 3/6/02—published 6/26/02, effective 7/31/02]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 7/29/05, Notice 6/22/05—published 8/17/05, effective 9/21/05]
[Filed 6/27/06, Notice 2/15/06—published 7/19/06, effective 8/23/06]
[Filed 2/8/07, Notice 1/3/07—published 2/28/07, effective 4/4/07]
[Filed ARC 0532C (Notice ARC 0176C, IAB 6/27/12), IAB 12/26/12, effective 1/30/13]

[1] Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.

[2] Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

CHAPTER 23
GROUNDS FOR DISCIPLINE
[Prior to 7/19/06, see 653—Chapter 12]

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, 261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

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

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

a. Willful or repeated gross malpractice;

b. Willful or gross negligence;

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

d. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

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

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

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

23.1(3) Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

23.1(4) Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653—13.7(147,148,272C) or 653—13.20(147,148) as interpreted by the board.

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

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

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

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

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

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

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

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

23.1(9) Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction, as defined in Iowa Code section 148.6(2)*"b."*

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

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

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

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

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

23.1(15) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture, medicine and surgery, or osteopathic medicine and surgery in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

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

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

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

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

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

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

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

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

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

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

23.1(22) Failure to report disciplinary action. Failure to report a license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

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

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

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

23.1(26) Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6 and 653—subrule 24.2(6) and rule 653—25.12(17A).

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

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

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

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

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

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

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

23.1(34) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary

proceedings initiated under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

23.1(35) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and 653—16.2(261).

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

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

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

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

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

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

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

23.1(43) Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to 2008 Iowa Acts, Senate File 2428, division II, and 653—Chapter 12.

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

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

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

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

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

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

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

4. Compliance with an educational plan.

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

6. A practice monitoring requirement.

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

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

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

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

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

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

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

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

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C and 2008 Iowa Acts, Senate File 2428, division II.

[**ARC 8525B**, IAB 2/10/10, effective 3/17/10; **ARC 9088B**, IAB 9/22/10, effective 10/27/10; **ARC 9598B**, IAB 7/13/11, effective 8/17/11; **ARC 0533C**, IAB 12/26/12, effective 1/30/13]

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 10/10/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83[1]]
[Filed 3/9/84, Notice 1/18/84—published 3/28/84, effective 5/2/84]
[Filed 10/19/84, Notice 8/29/84—published 11/7/84, effective 12/12/84[2]]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 10/28/88, Notice 6/15/88—published 11/16/88, effective 12/21/88]
[Filed 7/21/89, Notice 5/17/89—published 8/9/89, effective 9/13/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 11/3/94, Notice 9/28/94—published 11/23/94, effective 12/28/94]
[Filed 12/14/95, Notice 8/30/95—published 1/3/96, effective 2/7/96]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 2/2/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]
[Filed 6/12/98, Notice 4/22/98—published 7/1/98, effective 8/5/98]
[Filed 2/5/99, Notice 12/2/98—published 2/24/99, effective 3/31/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 6/6/02, Notice 3/6/02—published 6/26/02, effective 7/31/02]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 7/29/05, Notice 6/22/05—published 8/17/05, effective 9/21/05]
[Filed 6/27/06, Notice 2/15/06—published 7/19/06, effective 8/23/06]
[Filed 12/14/06, Notice 11/8/06—published 1/17/07, effective 2/21/07]
[Filed 2/8/07, Notice 1/3/07—published 2/28/07, effective 4/4/07]
[Filed 7/24/08, Notice 6/18/08—published 8/13/08, effective 9/17/08]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08][◊]
[Filed ARC 8525B (Notice ARC 8198B, IAB 10/7/09), IAB 2/10/10, effective 3/17/10]
[Filed ARC 9088B (Notice ARC 8925B, IAB 6/30/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9598B (Notice ARC 9415B, IAB 3/9/11), IAB 7/13/11, effective 8/17/11]

[Filed ARC 0533C (Notice ARC 0177C, IAB 6/27/12), IAB 12/26/12, effective 1/30/13]

◊ Two or more ARCs

1 Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.

2 Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

CHAPTER 24
COMPLAINTS AND INVESTIGATIONS
[Prior to 7/19/06, see 653—Chapter 12]

653—24.1(17A,147,148,272C) Complaints.

24.1(1) *Form and content of the complaint.* A complaint shall be made in the form deemed acceptable by the board. The complaint shall contain the following information:

a. The full name, address and telephone number of the complainant, except in instances in which the identity of the complainant is unknown.

b. The full name, address and telephone number, if known, of the licensee.

c. A clear and accurate statement of the facts that apprises the board of the allegations against the licensee.

24.1(2) *Place and time of filing of the complaint.* A written complaint may be delivered in person, by mail or electronically to the board office. The office address is Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The board's Web site address is www.medicalboard.iowa.gov.

24.1(3) *Immunity.* A person shall not be civilly liable as a result of filing a report or complaint with the board or peer review committee, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with proceedings of a peer review committee, or in connection with duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

653—24.2(17A,147,148,272C) Processing complaints and investigations.

24.2(1) *Complaint and investigative files.* Board staff shall open a complaint file upon receiving a complaint or other appropriate information or upon a motion of the board. A complaint file becomes an investigative file once an investigation is ordered.

a. If the board does not have legal jurisdiction over a matter, staff may close the complaint file administratively without investigation or review by the board. All other complaints shall be sent to the complaint review committee.

b. A complaint file shall be labeled as such and is not a public record. A complaint file shall become part of the licensee's history with the board and shall be shared with another licensing authority, upon request.

c. Anytime an investigation is ordered, a complaint file shall be relabeled as an investigative file. An investigative file is not a public record. The investigative file shall become part of the licensee's history with the board and shall be shared with another licensing authority, upon request.

24.2(2) *Complaint review committee.*

a. The complaint review committee includes the medical advisor, executive director, director of legal affairs, and chief investigator.

b. The complaint review committee shall review each complaint the board has received and shall take one of the following four actions:

(1) Close a complaint file administratively for any of these reasons:

1. The board does not have legal jurisdiction over the matter;

2. The case involves a matter that the board is already addressing; or

3. The case is appropriate for referral to the board's Iowa physician health program, and investigation is not warranted.

(2) Recommend to the board's screening committee that the board close the complaint file without investigation.

(3) Request an investigation by seeking a letter of explanation from the physician, medical records, or both.

(4) Request a full investigation.

c. The complaint review committee shall use the following to guide its decision making:

(1) The complaint review committee shall assign a case for full investigation if the case involves serious public safety issues, including but not limited to the following:

1. A clear violation of the laws and rules governing the practice of medicine or acupuncture, as applicable;

2. Significant investigative history which raises serious concerns about the licensee's ability to practice medicine in a competent and safe manner;

3. Significant investigative history which raises serious concerns that the licensee has engaged in a pattern of unprofessional conduct or disruptive behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff;

4. Serious quality of care cases that include severe patient harm, a pattern of inappropriate treatment, or serious medical errors;

5. Serious criminal conduct;

6. Substance abuse or other impairment that significantly impacts the licensee's ability to practice the licensee's respective practice in a competent and safe manner;

7. Sexual misconduct;

8. Severe unprofessional conduct or disruptive behavior;

9. Disciplinary action by another regulatory authority; or

10. Unlicensed practice of medicine or acupuncture.

(2) If a case involves less serious public safety issues, the complaint review committee shall take one of the following actions:

1. Recommend to the board's screening committee that the complaint file be closed without an investigation.

2. Request an investigation by seeking a letter of explanation from the physician, medical records, or both.

3. Request a full investigation if a pattern of less serious public safety issues appears to exist.

(3) Less serious public safety issues include, but are not limited to, the following:

1. Less serious quality of care cases that do not involve serious patient harm and are isolated occurrences rather than a part of a pattern of inappropriate treatment or serious medical errors;

2. A single incident involving a billing dispute;

3. A single incident involving rude behavior or personality conflicts;

4. A single incident of communication problems; or

5. Poor record-keeping practices that are not repeated or ongoing in nature and do not significantly affect patient care.

d. The board may at any time reopen for review and reconsideration any complaint or investigative file that has been closed administratively.

e. The complaint review committee shall indicate high-priority cases when they are assigned for investigation. The committee may provide recommendations to investigators regarding the nature of investigation to be completed. The medical advisor shall provide medical advice to the investigators as part of the investigative process.

24.2(3) *Screening committee.* The screening committee shall review the recommendations of the complaint review committee and shall take one of the following actions:

a. Recommend to the board that the complaint file be closed without investigation.

b. Request an investigation by seeking a letter of explanation from the physician, medical records, or both.

c. Review the materials acquired pursuant to paragraph *"b"* and recommend to the board that the investigative file be closed, with or without issuing an informal letter.

d. Request a full investigation for board review.

24.2(4) *Board action.*

a. The board shall review the screening committee's recommendations and take one of the following actions:

(1) Close the complaint file without investigation. The board shall notify the complainant and the licensee of the decision by letter.

(2) Close the investigative file that has been partially or fully investigated, with or without issuing an informal letter. The board shall notify the complainant and the licensee of the decision by letter.

(3) Request further investigation.

b. The board may reconsider and reopen a closed complaint or investigative file at a later date should it be deemed appropriate.

24.2(5) *Investigations.*

a. *Complainants.* At the time an investigation is opened, the complainant shall be sent a letter with the name of the investigator assigned to the case and the investigator's contact information and a statement encouraging the complainant to submit any further information that would assist the investigator with the case.

(1) The complainant may request a meeting with the investigator prior to the completion of the investigation.

(2) The complainant shall be informed of the confidentiality of the investigative information as provided in 24.2(8).

(3) The complainant may contact the chief investigator with questions or concerns about the investigation.

b. *Investigative subpoenas.*

(1) Issuance of an investigative subpoena. The executive director or a designee may, upon the written request of a board investigator or upon the executive director's own initiative, subpoena books, papers, records, and other real evidence necessary for a board investigation.

(2) Request for subpoena. A written request for a subpoena shall contain the following:

1. The name and address of the person to whom the subpoena will be directed;
2. A specific description of the books, papers, records or other real evidence requested;
3. An explanation of why the evidence sought to be subpoenaed is necessary for the board to determine whether it should institute a contested case proceeding; and
4. In the case of a subpoena request for mental health records, confirmation that the conditions described in subparagraph 24.2(5)*"b"*(4) have been satisfied.

(3) Contents of subpoena. Each subpoena shall contain the following:

1. The name and address of the person to whom the subpoena is directed;
2. A description of the books, papers, records or other real evidence requested;
3. The date, time and location for production or inspection and copying;
4. The time within which a motion to quash or modify the subpoena must be filed;
5. The signature, address and telephone number of the executive director or designee;
6. The date of issuance; and
7. A return of service attached to the subpoena.

(4) Subpoena for mental health records. A subpoena for mental health records shall meet the requirements of subparagraph (3) above. The board shall document the following prior to the issuance of a subpoena for mental health records:

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

(5) Motion to quash or modify subpoena.

1. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after 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.

2. Hearing on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct

a hearing and issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge or the board. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

3. Appeal of decision on motion. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within 10 days after service of the decision of the administrative law judge.

4. Final agency action. 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 the person is notified that the investigation has been concluded with no formal action or there is a final decision in the contested case.

c. Licensee response. Prior to the commencement of a contested case proceeding, the investigator shall attempt to contact the licensee at the address of record to give the licensee the opportunity to respond to the allegations under investigation. If the licensee cannot be located at the address of record, the investigator shall make reasonable efforts to locate the licensee; but if that licensee cannot be located, the investigation shall be completed and sent to the board without the licensee's response. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview.

d. Investigative report. Upon completion of an investigation, the investigator shall prepare a report for the board's consideration. The report shall set forth the information obtained in the course of the investigation and the response, if any, of the licensee.

e. Board review. The board shall review the investigative record, discuss the case, and take one of the following actions:

(1) Close the investigative file without action. The board shall notify the complainant and the licensee of the decision by letter. The board may reconsider and reopen a closed complaint or investigative file at a later date should it be deemed appropriate.

(2) Request further investigation, including peer review.

(3) Meet with the licensee. The board or the licensee may request that the licensee appear before the board to discuss a pending investigation. The board has discretion on whether to grant a licensee's request for an appearance. By electing to participate in the appearance, the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that:

1. Board members have personally investigated the case, and

2. Board members have combined investigative and adjudicative functions.

If the executive director or director of legal affairs participates in the appearance, the licensee further waives any objection to having the executive director or director of legal affairs assist the board in the contested case proceeding.

(4) Issue an informal letter of warning or education. If the board concludes that there is not probable cause to file disciplinary charges, the board may issue the licensee an informal letter of warning or education. A letter of warning or education is an informal communication between the board and the licensee and is not formal disciplinary action or a public document.

(5) File a statement of charges. If the board determines that there is probable cause for taking formal disciplinary action against a licensee, the board shall file a statement of charges, thereby commencing a contested case proceeding.

Prior to the initiation of formal disciplinary charges in a case involving the supervision of a physician assistant, the board shall forward a copy of the investigative report to the board of physician assistants for its advice and recommendation. The board of physician assistants shall respond within six weeks or sooner if requested by the board of medicine. The board of medicine shall consider the advice and recommendation of the board of physician assistants.

(6) Request a combined statement of charges and settlement agreement. At the board's discretion, the board and the licensee may enter into a combined statement of charges and settlement agreement to resolve a contested case proceeding.

24.2(6) *Licensee-patient privileged communications.* The privilege of confidential communication between the recipient and the provider of health care services shall not extend to afford confidentiality to medical records maintained by or on behalf of the subject of an investigation by the board, or records maintained by any public or private agency or organization, which relate to a matter under investigation by the board. No provision of Iowa Code section 622.10, except as it relates to an attorney of the licensee, or the stenographer or confidential clerk of the licensee's attorney, shall be interpreted to restrict access by the board or its staff or agents to information sought in an investigation being conducted by the board.

24.2(7) *Investigation of malpractice lawsuits, judgments and settlements.* The board shall review reports received from insurance carriers and licensees involving malpractice lawsuits, adverse judgments, and settlements. The board may choose to investigate such reports in the same manner as is prescribed in these rules for the review and investigation of other complaints to determine whether there is probable cause under applicable statutes or administrative rules for licensee discipline.

24.2(8) *Confidentiality of investigative information.* All investigative information obtained by the board or its employees or agents, including peer reviewers acting under the authority of the board, in the investigative process is privileged and confidential. Board investigative information is not subject to discovery, subpoena, or other means of legal compulsion for its release to any person other than the licensee and the board or its employees and agents and is not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, the statement of charges, settlement agreement or decision of the board in a contested case disciplinary proceeding shall be an open record.

653—24.3(272C) Peer review. The board may assign any case to peer review for evaluation of the professional services rendered by the licensee and report to the board.

24.3(1) *Registration of peer reviewers.* The board may register peer reviewers by maintaining a list of peer reviewers in the board office. The board shall enter into a contract with peer reviewers to provide peer review services.

24.3(2) *Case referral for peer review.* The board or board staff shall determine which peer reviewers will review a case and what investigative information shall be referred to a peer reviewer.

24.3(3) *Board assistance to peer reviewers.* The board may provide investigatory and related services to assist the peer reviewers.

24.3(4) *Confidentiality.* Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

24.3(5) *Liability, defense and indemnity.* Peer reviewers shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice. Peer reviewers shall be provided a defense by the state for civil lawsuits related to board peer review and shall be indemnified for all such judgments or settlements as provided by applicable law and administrative rules.

24.3(6) *Written peer review report.* Peer reviewers shall review the information provided by the board and provide a written report to the board.

a. The written report shall contain a statement of facts, an opinion of the peer reviewers whether the licensee violated the standard of care, and the rationale supporting the opinion.

b. The written report shall be signed by the peer reviewers concurring in the report.

c. If the peer reviewers find that they are unable to review the case, the investigative information shall be returned to the board.

653—24.4(272C) Order for physical, mental, or clinical competency evaluation. All licensees of this board, as a condition of licensure, have a duty to submit to a physical, mental, or clinical competency evaluation within a time specified by order of the board. A physical or mental evaluation may be ordered upon a showing of probable cause that the licensee suffers from a mental, neuropsychological, physical,

physiological, psychiatric or psychological condition, including, but not limited to, behavior which constitutes professional sexual misconduct as defined by 653—subrule 13.7(4), disruptive behavior as defined by 653—subrule 13.7(5), or substance abuse. A physical or mental health evaluation may include a disruptive behavior evaluation, neuropsychological evaluation, psychiatric evaluation, professional sexual misconduct evaluation, substance abuse evaluation, or screening for alcohol or drug abuse. A clinical competency evaluation may be ordered upon a showing of probable cause that the licensee is professionally incompetent. The evaluation order and all information developed during the evaluation process shall remain part of a confidential investigative file pursuant to Iowa Code section 272C.6(4). The evaluation or screening shall be at the licensee's expense. All such orders shall be delivered to the licensee via personal service or by certified mail, return receipt requested.

24.4(1) *Content of order.* A board order shall include the following items:

a. Probable cause. A showing by the board that there is probable cause to order the licensee to complete an evaluation.

b. Nature of evaluation or screening. A description of the type of evaluation or screening that the licensee must complete.

c. Evaluation facility. The name and address of the examiner or evaluation or treatment or screening facility that the board has identified to perform the evaluation.

d. Scheduling the evaluation. The amount of time in which the licensee must schedule the required evaluation.

e. Completion of the evaluation. The amount of time in which the licensee must complete the evaluation.

f. Board release. A requirement that the licensee sign all necessary releases for the board to communicate with the evaluator or the evaluation or treatment program and to obtain any reports generated by the program.

24.4(2) *Alternatives.* Following issuance of the evaluation order, the licensee may request additional time to schedule or complete the evaluation or to request the board to approve an alternative evaluator or treatment facility. The board shall determine whether to grant such a request.

24.4(3) *Objection to order.* A licensee who is the subject of a board evaluation order and who objects to the order may file a request for hearing. The request shall be filed within 14 days of issuance of the evaluation order. A licensee who fails to timely file a request for hearing to object to an evaluation order waives any future objection to the evaluation order in the event formal disciplinary charges are filed for failure to comply with the evaluation order or on any other grounds. The request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 653—Chapter 25.

24.4(4) *Closed hearing.* Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

24.4(5) *Order and reports confidential.* An evaluation order and any subsequent evaluation reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4). However, all investigative information related to an evaluation order shall be provided to the licensee in the event the licensee files an objection under 24.4(3), in order to allow the licensee an opportunity to prepare for hearing.

24.4(6) *Admissibility.* In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the licensee's testimony or evaluation reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

24.4(7) *Failure to submit.* Failure of a licensee to submit to a board-ordered mental, physical, clinical competency or substance abuse evaluation or alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]

[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 10/10/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83][1]
[Filed 3/9/84, Notice 1/18/84—published 3/28/84, effective 5/2/84]
[Filed 10/19/84, Notice 8/29/84—published 11/7/84, effective 12/12/84][2]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 10/28/88, Notice 6/15/88—published 11/16/88, effective 12/21/88]
[Filed 7/21/89, Notice 5/17/89—published 8/9/89, effective 9/13/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 11/3/94, Notice 9/28/94—published 11/23/94, effective 12/28/94]
[Filed 12/14/95, Notice 8/30/95—published 1/3/96, effective 2/7/96]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 2/2/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]
[Filed 6/12/98, Notice 4/22/98—published 7/1/98, effective 8/5/98]
[Filed 2/5/99, Notice 12/2/98—published 2/24/99, effective 3/31/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 6/6/02, Notice 3/6/02—published 6/26/02, effective 7/31/02]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 7/29/05, Notice 6/22/05—published 8/17/05, effective 9/21/05]
[Filed 6/27/06, Notice 2/15/06—published 7/19/06, effective 8/23/06]
[Filed emergency 8/17/06—published 9/13/06, effective 8/23/06]
[Filed 11/21/07, Notice 10/10/07—published 12/19/07, effective 1/23/08]
[Filed 10/15/08, Notice 4/23/08—published 11/5/08, effective 12/10/08]

[1] Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.

[2] Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

CHAPTER 25
CONTESTED CASE PROCEEDINGS

[Prior to 7/19/06, see 653—Chapter 12]

653—25.1(17A) Definitions. Except where otherwise specifically defined by law:

"Appear personally" means the ability to participate at a hearing or a prehearing conference through teleconference or videoconference or to be physically present.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

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

"Party" means the state of Iowa or the respondent.

"Presiding officer" means the board of medicine or a panel of the board. In a disciplinary contested case proceeding, the board may request that an administrative law judge make initial rulings on prehearing matters, and assist and advise the board in presiding at the disciplinary contested case hearing.

"Proposed decision" means a hearing panel's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

"Quorum of the board" means a majority of the members of the board. Official action, including filing of formal charges or imposition of discipline, requires a majority vote of the members present.

653—25.2(17A) Scope and applicability. These rules apply to contested case proceedings conducted by the board of medicine.

653—25.3(17A) Combined statement of charges and settlement agreement. Upon a determination by the board that probable cause exists to take formal disciplinary action, the board and the licensee may enter into a combined statement of charges and settlement agreement.

25.3(1) *Board discretion.* The board has the sole discretion to determine whether to offer a licensee a combined statement of charges and settlement agreement.

25.3(2) *Voluntary agreement.* Entering into a combined statement of charges and settlement agreement is completely voluntary.

25.3(3) *Contents.* The combined statement of charges and settlement agreement shall include a brief statement of the charges, the circumstances that led to the charges and the terms of settlement.

25.3(4) *Resolution of the contested case.* A combined statement of charges and settlement agreement shall constitute the resolution of a contested case proceeding.

25.3(5) *Open record.* A combined statement of charges and settlement agreement is an open record.

653—25.4(17A) Statement of charges.

25.4(1) *Probable cause.* In the event that the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order that a contested case hearing be commenced by the filing of a statement of charges.

25.4(2) *Legal review.* Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed.

25.4(3) *Time requirements.*

a. Time shall be computed as provided in Iowa Code section 4.1(34).

b. For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. 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.

25.4(4) *Delivery.* Delivery of the statement of charges constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

25.4(5) *Contents.* The statement of charges shall contain the following information:

a. A statement by the board showing that there is probable cause to file the statement of charges;

b. A statement of the time, place, and nature of the hearing;

c. A statement of the legal authority and jurisdiction under which the hearing is to be held;

d. A reference to the particular sections of the statutes and rules involved;

e. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

f. A statement that the party may be represented by legal counsel at the party's own expense;

g. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and of parties' counsel where known;

h. Reference to the procedural rules governing conduct of the contested case proceeding;

i. Reference to the procedural rules governing informal settlement;

j. Identification of the board as the presiding officer;

k. A statement requiring the respondent to submit an answer pursuant to subrule 25.10(2) within 20 days after receipt of the statement of charges; and

l. When applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1)*"a"* and rule 653—25.7(17A), that the presiding officer be an administrative law judge.

653—25.5(17A) Legal representation. Following the filing of the statement of charges, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

653—25.6(17A) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board or a panel of the board. The board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 653—25.23(17A). In addition, an administrative law judge may assist and advise the board presiding at the contested case hearing.

653—25.7(17A) Presiding officer in a nondisciplinary contested case.

25.7(1) A "nondisciplinary contested case" includes license denial proceedings. Any party in a nondisciplinary contested case, including an appeal of a denial of licensure, 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 statement of charges which identifies or describes the presiding officer as the board.

25.7(2) The board may deny the request only upon a finding that one or more of the following apply:

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

b. An administrative law judge with the qualifications identified in subrule 25.7(4) is unavailable to hear the case within a reasonable time.

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

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

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

f. The request was not timely filed.

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

25.7(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 contingent upon the availability

of an administrative law judge with the qualifications identified in subrule 25.7(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

25.7(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a juris doctorate degree.

25.7(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

25.7(6) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon intra-agency appeal, the board shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

653—25.8(17A) Disqualification.

25.8(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. If the licensee elects to appear before the board in the investigative process pursuant to 653—paragraph 24.2(5)*"d,"* the licensee waives this provision.

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 who:

(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.

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

25.8(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:

a. General direction and supervision of assigned investigators;

b. Unsolicited receipt of information which is relayed to assigned investigators;

c. Review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or

d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 25.8(3) and 25.21(8).

By electing to participate in an appearance before the board pursuant to 653—paragraph 24.2(5)*"d,"* the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that the board member "personally investigated" the matter under this provision.

25.8(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.

25.8(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 25.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in the case.

653—25.9(17A) Consolidation—severance.

25.9(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.

25.9(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

653—25.10(17A) Pleadings.

25.10(1) Pleadings may be required by rule, by the statement of charges, or by order of the presiding officer.

25.10(2) Answer or appearance. An answer or appearance may be filed by the respondent within 20 days of service of the statement of charges. The answer or appearance shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14.

25.10(3) Amendment. Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

653—25.11(17A) Service and filing.

25.11(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state, simultaneously with its filing. Except for the original 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.

25.11(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.

25.11(3) *Filing—when required.* After the statement of charges, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

25.11(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

25.11(5) *Proof of mailing.* Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. 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 Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, 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)

653—25.12(17A) Discovery.

25.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, or by agreement of the parties, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

25.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

653—25.13(17A,272C) Subpoenas in a contested case.

25.13(1) Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing and may compel the production of books, papers, records, or 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 may be issued separately. Subpoenas shall be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 653—paragraph 24.2(6)*"d"* have been satisfied prior to the issuance of the subpoena.

25.13(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, 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 653—paragraph 24.2(6)*"d"* have been satisfied.

25.13(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 board administrator or designee;

j. The date of issuance; and

k. A return of service attached to the subpoena.

25.13(4) Unless a subpoena is requested in order to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail the subpoena to the requesting party,

with a copy to the opposing party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

25.13(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.

25.13(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct the hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

25.13(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

25.13(8) If the person contesting the subpoena is not a party to the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

653—25.14(17A) Motions.

25.14(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.

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

25.14(3) The presiding officer may schedule oral argument on any motion.

25.14(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

653—25.15(17A) Prehearing conferences.

25.15(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director or designee, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date.

25.15(2) The parties at a prehearing conference shall be prepared to discuss the following subjects, and the executive director or administrative law judge may issue appropriate orders concerning:

a. The possibility of settlement.

b. The entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list

may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters which the parties intend to request be officially noticed.

i. Consideration of any additional matters which will expedite the hearing.

25.15(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

653—25.16(17A) Continuances. Unless otherwise provided, applications for continuances shall be filed with the board at least seven days before the date scheduled for hearing. If the application for continuance is not contested, the executive director or designee shall issue the appropriate order. If the application for continuance is contested, the matter shall be heard by the board as presiding officer or may be delegated by the board to an administrative law judge. No continuance shall be granted within seven days of the date of hearing except for extraordinary, extenuating or emergency circumstances.

25.16(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 for continuance; and

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

An oral application for a continuance may be made if the board or 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 two days after the oral request unless that requirement is waived by the board or 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.

25.16(2) The board or presiding officer may require documentation of any grounds for continuance. In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of informal settlement;

e. The existence of an emergency;

f. Any objection;

g. Any applicable time requirements;

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

i. The timeliness of the request; and

j. Other relevant factors.

653—25.17(272C) Settlement agreements.

25.17(1) A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process. The executive director, director of legal affairs, or prosecuting attorney shall have authority to negotiate on behalf of the board.

25.17(2) The full board shall not be involved in negotiations until a written proposed settlement is submitted to the full board for approval, unless both parties waive this prohibition.

25.17(3) Consent to negotiation by the respondent during settlement negotiation constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17. Thereafter, the prosecuting attorney is authorized to discuss settlement with the board chairperson or designee.

25.17(4) Settlement negotiations shall be completed at least seven days prior to the date scheduled for hearing whenever possible.

25.17(5) A settlement agreement is an open record.

653—25.18(17A) Hearing procedures.

25.18(1) Hearings are conducted before a quorum of the board. When a sufficient number of board members are unavailable to hear a contested case, the executive director, or the executive director's designee, may request alternate members, as defined in rule 653—1.1(17A,147) and Iowa Code sections 148.2A and 148.7(4), to serve on the hearing panel. A hearing panel must include at least six members, at least half of whom must be current board members, and at least half of whom must be licensed to practice medicine under Iowa Code chapter 148.

25.18(2) When, in the opinion of a majority of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

25.18(3) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions and may be assisted and advised by an administrative law judge.

25.18(4) All objections shall be timely made and stated on the record.

25.18(5) Parties have the right to appear personally and to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

25.18(6) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. Subject to terms and conditions prescribed by the presiding officer, parties may present the testimony of witnesses by affidavit, by written or video deposition, in person, by telephone, or by videoconference.

25.18(7) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

25.18(8) Witnesses may be sequestered during the hearing.

25.18(9) The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

25.18(10) The presiding officer shall conduct the hearing in the following manner:

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

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

c. The parties shall present their cases in the sequence determined by the presiding officer.

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

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

25.18(11) The board members and administrative law judge have the right to question a witness. Examination of witnesses by board members is subject to properly raised objections.

25.18(12) The hearing shall be open to the public unless the licensee requests that the hearing be closed. At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

[**ARC 9952B**, IAB 1/11/12, effective 2/15/12; **ARC 2706C**, IAB 9/14/16, effective 10/19/16]

653—25.19(17A) Evidence.

25.19(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.

25.19(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

25.19(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.

25.19(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

25.19(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

25.19(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.

653—25.20(17A) Default.

25.20(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.

25.20(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

25.20(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 25.24(2). 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.

25.20(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.

25.20(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.

25.20(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under the Iowa Rules of Civil Procedure.

25.20(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 653—25.23(17A).

25.20(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another statement of charges and the contested case shall proceed accordingly.

25.20(9) 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 653—25.27(17A).

653—25.21(17A) Ex parte communication.

25.21(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the statement of charges, 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. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 25.8(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.

25.21(2) Prohibitions on ex parte communications commence with the issuance of the statement of charges in a contested case and continue for as long as the case is pending before the board.

25.21(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

25.21(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 653—25.11(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.

25.21(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate to the extent necessary to carry out their function as presiding officer.

25.21(6) The executive director or director of legal affairs may be present during deliberations as long as that person is not disqualified from participating under rule 653—25.8(17A). The executive director or director of legal affairs shall not attempt to influence the board's decision in the proceeding.

25.21(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 653—25.16(17A).

25.21(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the contested case process must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified.

a. 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.

b. 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.

25.21(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.

25.21(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 board and its executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

653—25.22(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

653—25.23(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the executive director, administrative law judge, or hearing panel. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first. In determining whether to do so, the board shall consider:

1. The extent to which its granting the interlocutory appeal would expedite final resolution of the case; and
2. The extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy.

653—25.24(17A) Decisions.

25.24(1) *Final decisions.*

a. When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision. A majority of the members of the board shall constitute a quorum. A final decision of the board is an open record. Final decisions shall be served on the parties in accordance with subrule 25.11(2).

b. A decision of a hearing panel containing alternate members is considered a final decision of the board, in accordance with Iowa Code section 148.2A.

25.24(2) *Proposed panel decisions.*

a. Panel of specialists. When a panel of three specialists presides over the hearing, the panel shall issue a proposed panel decision which shall include findings of fact but shall not include conclusions of law. A proposed decision of a panel of specialists, together with a transcript of the proceedings and the exhibits presented, shall be reviewed by the board within 30 days of the date the proposed decision was issued.

b. Panel of board members. When a panel of three or more board members presides over the hearing, the panel shall issue a proposed panel decision which shall include proposed findings of fact, conclusions of law, and order. A proposed panel decision shall be reviewed by the board within 30 days of the date the proposed panel decision was issued. A proposed panel decision becomes a final decision without further proceedings unless appealed in accordance with paragraph 25.24(2)*"c."*

c. Appeal of proposed panel decisions. A proposed panel decision pursuant to paragraph 25.24(2)*"a"* or *"b"* may be appealed to the full board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party.

(1) Following receipt of a notice of appeal, the board shall enter an order establishing a schedule for submission of briefs and oral argument. The parties shall serve their briefs on the board and shall furnish an additional copy to each party by first-class mail.

(2) Oral argument shall be heard by the board unless waived by both parties. The time granted each party for oral argument shall be established by the board.

(3) The record on appeal shall be the entire record made before the hearing panel or administrative law judge.

d. Confidentiality. At no time prior to the release of the final decision by the board shall a proposed decision be made public or distributed to any person other than the parties.

e. Requests to present additional evidence. A party may request the taking of additional evidence after the issuance of a proposed decision only by establishing that:

(1) The evidence is material; and
(2) The evidence arose after the completion of the original hearing; or
(3) Good cause exists for failure to present the evidence at the original hearing; and
(4) The party has not waived the right to present additional 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 hearing panel for further hearing or may itself preside at the taking of additional evidence.

653—25.25(272C) Disciplinary sanctions.

25.25(1) If the board concludes following a contested case hearing that discipline is warranted, the board has authority to impose any of the following disciplinary sanctions:

a. Revocation.
b. Suspension.
c. Restriction.
d. Probation.
e. Additional education or training.
f. Reexamination.
g. Physical or mental evaluation or substance abuse evaluation, or alcohol or drug screening or clinical competency evaluation.
h. Civil penalties not to exceed $10,000.
i. Citation and warning.
j. Imposition of such other sanctions allowed by law as may be appropriate.

25.25(2) At the discretion of the board, the following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation.
b. The facts of the particular violation.
c. Any extenuating circumstances or other countervailing considerations.
d. Number of prior complaints, informal letters or disciplinary charges.
e. Seriousness of prior complaints, informal letters or disciplinary charges.
f. Whether the licensee has taken remedial action.
g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

653—25.26(17A) Application for rehearing.

25.26(1) *Who may file.* Any party to a contested case proceeding may file an application for rehearing from a final order.

25.26(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in paragraph 25.24(2)*"e"* and subrule 25.26(5), the applicant requests an opportunity to submit additional evidence.

25.26(3) *Filing deadline.* The application shall be filed with the board within 20 days after issuance of the final decision.

25.26(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

25.26(5) *Additional evidence.* A request that additional evidence be considered on rehearing shall be governed by paragraph 25.24(2)*"e."*

25.26(6) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

25.26(7) *Only remedy.* Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

653—25.27(17A) Stays of agency actions.

25.27(1) *When available.* 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 or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

25.27(2) *When granted.* In determining whether to grant a stay, the board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."* The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay.

653—25.28(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.

653—25.29(17A) Emergency adjudicative proceedings.

25.29(1) *Emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the 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.

25.29(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 and the board's decision to take immediate action. The order is an open record.

b. The written emergency adjudicative order shall be immediately delivered to the person who is 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 agency;

(3) Certified mail to the last address on file with the agency; or

(4) Fax, which may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

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

25.29(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order is issued, the board shall make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

25.29(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 hearing. The licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time upon written application to the board. The board will be granted a continuance only in compelling circumstances upon written application.

653—25.30(17A) Appeal of license denial. An applicant may appeal a preliminary notice of denial of license by filing a written notice of appeal and request for hearing with the board within 30 days of the date that the preliminary notice of denial of license was mailed by the board. The hearing shall be a contested case and shall be conducted in accordance with this chapter.

653—25.31(17A) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of the board's order.

653—25.32(17A) Open record. The final decision of the board is an open record. The board shall report final decisions to the appropriate organizations, including but not limited to the National Practitioner Data Bank, the Federation of State Medical Boards and all media and other organizations that have filed a request for public information.

653—25.33(272C) Disciplinary hearings—fees and costs.

25.33(1) *Definitions.* As used in this rule in relation to a formal disciplinary action filed by the board against a licensee:

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

"Evaluation fees" means actual costs incurred by the board in a physical, mental, chemical abuse, other impairment-related examination or evaluation or clinical competency evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

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

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

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

25.33(2) *Disciplinary hearing fee.* The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the board as provided in subrule 25.33(6).

25.33(3) *Recovery of related hearing costs.* The board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may recover the costs for the court reporter and assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

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

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

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

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

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

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

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines in effect on January 1, 2005.

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

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

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

d. *Medical examination fees.* All costs of physical or mental examinations or substance abuse evaluations or drug screening or clinical competency evaluations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

25.33(4) *Certification of reimbursable costs.* The executive director or designee shall certify any reimbursable costs incurred by the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on the party responsible for payment of the certified costs at the time of the filing.

25.33(5) *Assessment of fees and costs.* A final decision of the board imposing disciplinary action against a licensee shall include the amount of any disciplinary hearing fee assessed, which shall not exceed $75. If the board also assesses reimbursable costs against the licensee, the board shall file a Certification of Reimbursable Costs which includes a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

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

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

25.33(6) *Payment of fees and costs.* All fees and costs assessed pursuant to this rule shall be made in the form of a check or money order made payable to Iowa Board of Medicine and delivered by the licensee to the board office.

25.33(7) *Failure to make payment.* Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

25.33(8) *Repayment receipts.* Fees and costs collected by the board pursuant to this rule shall be considered repayment receipts as defined in Iowa Code section 8.2.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 10/10/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83][1]
[Filed 3/9/84, Notice 1/18/84—published 3/28/84, effective 5/2/84]
[Filed 10/19/84, Notice 8/29/84—published 11/7/84, effective 12/12/84][2]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 10/28/88, Notice 6/15/88—published 11/16/88, effective 12/21/88]
[Filed 7/21/89, Notice 5/17/89—published 8/9/89, effective 9/13/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 11/3/94, Notice 9/28/94—published 11/23/94, effective 12/28/94]
[Filed 12/14/95, Notice 8/30/95—published 1/3/96, effective 2/7/96]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 2/2/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]
[Filed 6/12/98, Notice 4/22/98—published 7/1/98, effective 8/5/98]
[Filed 2/5/99, Notice 12/2/98—published 2/24/99, effective 3/31/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]
[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 6/6/02, Notice 3/6/02—published 6/26/02, effective 7/31/02]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 7/29/05, Notice 6/22/05—published 8/17/05, effective 9/21/05]
[Filed 6/27/06, Notice 2/15/06—published 7/19/06, effective 8/23/06]
[Filed emergency 8/17/06—published 9/13/06, effective 8/23/06]
[Filed 7/24/08, Notice 6/18/08—published 8/13/08, effective 9/17/08]◊
[Filed ARC 9952B (Notice ARC 9807B, IAB 10/19/11), IAB 1/11/12, effective 2/15/12]
[Filed ARC 2706C (Notice ARC 2610C, IAB 7/6/16), IAB 9/14/16, effective 10/19/16]

◊ Two or more ARCs

[1] Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.

[2] Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

CHAPTER 26
REINSTATEMENT AFTER DISCIPLINARY ACTION

[Prior to 7/19/06, see 653—Chapter 12]

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

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

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

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

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

26.1(5) A reinstatement order must be based upon the affirmative vote of a quorum of the board. The reinstatement order is public information pursuant to 653—25.32(17A).

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

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

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 10/10/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83[1]]
[Filed 3/9/84, Notice 1/18/84—published 3/28/84, effective 5/2/84]
[Filed 10/19/84, Notice 8/29/84—published 11/7/84, effective 12/12/84[2]]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 10/28/88, Notice 6/15/88—published 11/16/88, effective 12/21/88]
[Filed 7/21/89, Notice 5/17/89—published 8/9/89, effective 9/13/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 11/3/94, Notice 9/28/94—published 11/23/94, effective 12/28/94]
[Filed 12/14/95, Notice 8/30/95—published 1/3/96, effective 2/7/96]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 2/2/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]
[Filed 6/12/98, Notice 4/22/98—published 7/1/98, effective 8/5/98]
[Filed 2/5/99, Notice 12/2/98—published 2/24/99, effective 3/31/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]
[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]

[Filed 5/11/01, Notice 4/4/01—published 5/30/01, effective 7/4/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 6/6/02, Notice 3/6/02—published 6/26/02, effective 7/31/02]
[Filed 5/20/04, Notice 4/14/04—published 6/9/04, effective 7/14/04]
[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/8/04]
[Filed 7/29/05, Notice 6/22/05—published 8/17/05, effective 9/21/05]
[Filed 6/27/06, Notice 2/15/06—published 7/19/06, effective 8/23/06]
[Filed 9/18/08, Notice 8/13/08—published 10/8/08, effective 11/12/08]

[1] Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.

[2] Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.