

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.

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