

CHAPTER 9
COMPLAINTS, INVESTIGATIONS AND DISCIPLINARY ACTION

[Prior to 11/14/01, see 193C—Chapter 4]

193C—9.1(542B) Complaints and investigations.

9.1(1) *Complaints.* The board shall, upon receipt of a complaint in writing, or may upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions which reasonably constitute cause under applicable law or administrative rule for licensee discipline. Written complaints may be submitted to the board office by mail, E-mail, facsimile, or personal delivery by members of the public, including clients, business organizations, nonprofit organizations, governmental bodies, licensees, or other individuals or entities with knowledge of possible violations of laws or rules by licensees.

9.1(2) *Form and content.* A written complaint may be submitted on forms available from the board office and on the board's Web site. The written complaint shall include the following information:

- a.* The full name, address, and telephone number of complainant (individual who is complaining).
- b.* The full name, address, and telephone number of respondent (individual against whom the complaint is filed).
- c.* A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions which the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.
- d.* Citation of the statutes and administrative rules allegedly violated by the respondent.
- e.* Evidentiary supporting documentation.
- f.* Steps, if any, that have been taken by the complainant to resolve the dispute with the respondent prior to the filing of the complaint.

9.1(3) *Initial complaint screening.* All written complaints received by the board shall be initially screened by the board's administrator to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a licensee. Complaints which are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous shall be referred by the board administrator to the board for closure at the next scheduled board meeting. All other complaints shall be referred by the board administrator to the board's disciplinary committee for committee review.

9.1(4) *Investigation of allegations.* In order to determine if probable cause exists for a hearing on the complaint, the board may cause an investigation to be made into the allegations of the complaint. It may refer the complaint to a peer review committee or investigator for investigation, review and report to the board.

9.1(5) *Informal discussion.* If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion. By electing to attend, the licensee waives the right to seek disqualification, based upon personal investigation of a board member or staff, from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

9.1(6) *Immunity.* As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

9.1(7) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding which the board may initiate based in whole or in part on information provided by the complainant.

9.1(8) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate licensee discipline to be imposed, if any.

193C—9.2(542B) Ruling on the initial inquiry.

9.2(1) *Dismissal.* If a determination is made by the board that a complaint is without grounds or merit, the complaint shall be dismissed. A letter of explanation concerning the decision of the board shall be sent to the respondent and the complainant.

9.2(2) *Requirement of further inquiry.* If determination is made by the board to order further inquiry, the complaint and initial recommendations shall be provided to the investigator(s) along with a statement specifying the information deemed necessary.

9.2(3) *Acceptance of the case.* If a determination is made by the board to initiate disciplinary action the board may enter into an informal settlement or recommend formal disciplinary proceedings. The board's rules regarding informal settlement are found at 193 IAC 7.4(17A,272C).

This rule is intended to implement Iowa Code sections 542B.21, 542B.22 and 272C.6.

193C—9.3(542B) Reprimands, probation, license suspension or license revocation. Acts or omissions on the part of a licensee that are grounds for a reprimand, period of probation, license suspension or license revocation are as follows:

9.3(1) Acts or offenses defined in Iowa Code section 542B.21.

9.3(2) Acts or omissions which constitute negligence or carelessness that the licensee must report to the board as defined in rule 193C—8.3(542B).

9.3(3) Unethical conduct including, but not limited to, violation of the code of professional conduct in 193C—Chapter 8.

9.3(4) Failure to respond within 30 days to written communications from the board and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of 30 days shall commence on the date when such communication was sent from the board by registered or certified mail with return receipt requested to the address appearing in the last licensure.

9.3(5) Failure to comply with a warning from the board with respect to licensee behavior.

9.3(6) Any violation as provided in Iowa Code section 272C.10.

193C—9.4(542B) Disciplinary findings and sanctions. The board's decision may include one or more of the following findings or sanctions:

1. Exoneration of respondent.
2. Revocation of license.
3. Suspension of license until further order of the board or for a specified period.
4. Nonrenewal of license.
5. Prohibition, until further order of the board or for a specific period, of engaging in specified procedures, methods or acts.
6. Probation.
7. Requirement of additional education or training.
8. Requirement of reexamination.
9. Issuance of a reprimand.

10. Imposition of civil penalties.
11. Issuance of citation and warning.
12. Desk review.
13. Other sanctions allowed by law as may be appropriate.

193C—9.5(272C) Civil penalties. In addition to other disciplinary options, the board may assess civil penalties of up to \$1000 per violation against licensees who violate any provision of rule 9.3(542B). Factors the board may consider when determining whether and in what amount to assess civil penalties include:

1. Whether other forms of discipline are being imposed for the same violation.
2. Whether the amount imposed will be a substantial economic deterrent to the violation.
3. The circumstances leading to the violation.
4. The severity of the violation and the risk of harm to the public.
5. The economic benefits gained by the licensee as a result of the violation.
6. The interest of the public.
7. Evidence of reform or remedial action.
8. Time elapsed since the violation occurred.
9. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.
10. The clarity of the issue involved.
11. Whether the violation was willful and intentional.
12. Whether the licensee acted in bad faith.
13. The extent to which the licensee cooperated with the board.
14. Whether the licensee practiced professional engineering or land surveying with a lapsed, inactive, suspended or revoked license.

This rule is intended to implement Iowa Code section 542B.22.

193C—9.6(542B) Publication of decisions. In addition to publication requirements found at 193 IAC 7.30(3), the following notifications shall be issued:

1. Following suspension of a land surveyor's license, notification must be mailed to the county recorders and county auditors of the county of residence and immediately adjacent counties in Iowa.
2. Following revocation of a land surveyor's license, notification must be mailed to all county auditors in Iowa and the county recorders in the county of residence and immediately adjacent counties in Iowa.
3. Following the suspension or revocation of the license of a professional engineer or land surveyor, notification must be issued to other boards of examiners for engineers and land surveyors under the jurisdiction of the government of the United States. This notification may be made through the National Council of Examiners for Engineering and Surveying or other national organizations recognized by the board. In addition, if the licensee is known to be registered in another nation in North America, the appropriate board(s) shall be notified of the action.

193C—9.7(542B) Disputes between licensees and clients. Reports from the insurance commissioner or other agencies on the results of judgments or settlements of disputes arising from malpractice claims or other actions between professional engineers or land surveyors and their clients may be referred to counsel or peer review committee. The counsel or peer review committee shall investigate the report for violation of the statutes or rules governing the practice or conduct of the licensee. The counsel or peer review committee shall advise the board of any probable violations, any further action required, or recommend dismissal from further consideration.

193C—9.8(272C,542) Confidentiality of complaint and investigative information.

9.8(1) General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

9.8(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code Supplement section 546.10(9) [2007 Iowa Acts, Senate File 360, section 7], the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release information to a licensee that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee and prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review or investigative report or expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including those initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may release information from a peer review or consultant's report when soliciting the licensee's position will aid in making the probable cause determination and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

These rules are intended to implement Iowa Code chapter 17A and sections 542B.2, 542B.22, and 272C.6.

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