

CHAPTER 31  
COMPLAINTS AND INVESTIGATIONS

[Prior to 5/18/88, Dental Examiners, Board of [320]]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**650—31.1(272C) Complaint review.** The board shall, upon receipt of a complaint, or may upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee or registrant discipline. All complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee. The committee shall review the complaint and make a recommendation to the board.

**650—31.2(153) Form and content.** A written complaint should include the following facts:

1. The full name, address, and telephone number of the complainant.
2. The full name, address, and telephone number of the licensee or registrant.
3. A statement of the facts concerning the alleged acts or omissions.

**650—31.3(153) Address.** The written complaint may be delivered personally, electronically or by mail to the executive director of the board. The current office address is 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

**650—31.4(153) Investigation.** In order for the board to determine if probable cause exists for a hearing on the complaint, the executive director or authorized designee shall cause an investigation to be made into the allegations of the complaint.

**650—31.5(153) Issuance of investigatory subpoenas.** Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue an investigatory subpoena to compel the production of evidence deemed necessary in connection with a licensee disciplinary investigation. A subpoena issued by the board in connection with a licensee disciplinary investigation may seek evidence whether or not it is privileged or confidential under law.

**31.5(1)** The executive director or designee may, upon the written request of a board investigator or on the director's own initiative, subpoena books, correspondence, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

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

**31.5(2)** A written request for a subpoena or the director's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in 31.5(1) have been satisfied.

**31.5(3)** Each subpoena shall contain:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;

- c. The date, time and location for production or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the executive director or designee;
- f. The date of issuance; and
- g. A return of service attached to the subpoena.

**31.5(4)** Any person who is aggrieved or adversely affected by compliance with 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.

**31.5(5)** 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 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.

**31.5(6)** A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the 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.

**31.5(7)** If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action, or there is a final decision in the contested case.

**650—31.6(153) Board appearances.** The board may request a licensee or registrant to appear before the board to discuss a pending investigation. By electing to participate in the board appearance, the licensee or registrant 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 of a personal investigation and a combination of investigative and adjudicative functions. If the executive director participates in the appearance, the licensee or registrant further waives any objection to having the executive director assist the board in the contested case proceeding.

**650—31.7(153) Peer review.** A complaint may be assigned to a peer review committee for review, investigation and report.

**31.7(1)** The board shall determine which peer review committee will review a case involving a dentist or dental assistant and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board. The board may use the peer review committee system organized under the dental care programs council of the Iowa dental association, a peer review committee system organized by the Iowa dental assistants association, or a specifically constituted peer review committee designated by the board for matters involving dentists or dental assistants.

**31.7(2)** The dental hygiene committee shall determine which peer review committee will review a case involving a dental hygienist and what complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the dental hygiene committee. The dental hygiene committee may use the peer review system organized under the ethics committee of the Iowa dental hygienists' association or a specifically constituted peer review committee designated by the dental hygiene committee for matters involving dental hygienists.

**31.7(3)** The Iowa dental association, the Iowa dental hygienists' association and the Iowa dental assistants association shall register yearly and keep current their peer review systems with the board. Peer review committee members shall be registered with the board when appointed.

**31.7(4)** Members of the peer review committees shall not be liable for acts, omissions or decisions made in connection with service on the peer review committee. However, immunity from civil liability shall not apply if the act is done with malice.

**650—31.8(272C) Duties of peer review committees.**

**31.8(1)** The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

**31.8(2)** The board may provide investigative and related services to peer review committees.

**31.8(3)** A peer review committee shall thoroughly investigate a complaint as assigned and provide a written report to the board in accordance with the board's direction.

**31.8(4)** The peer review report shall contain a statement of facts and a recommendation as to whether a violation of the standard of care occurred. The peer review committee should consider relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

**31.8(5)** The peer review report shall be signed by the members of the peer review committee concurring in the report.

**31.8(6)** Upon completion, the peer review report and all investigative information shall be submitted to the board.

**650—31.9(272C) Board review.** The board shall review all investigative reports and proceed pursuant to 650—Chapter 51.

**650—31.10(272C) Confidentiality of investigative files.** Complaint files, investigation files, all other investigation reports, and other investigative information in the possession of the board or peer review committee acting under the authority of the board or its employees or agents which relate to licensee or registrant discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee or registrant and the board, its employees and agents involved in licensee or registrant discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee or registrant discipline. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

**650—31.11(272C) Reporting of judgments or settlements.** Each licensee or registrant shall report to the board every adverse judgment in a malpractice action to which the licensee or registrant is a party and every settlement of a claim against the licensee or registrant alleging malpractice. 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.

**650—31.12(272C) Investigation of reports of judgments and settlements.** Reports received by the board from the commissioner of insurance, insurance carriers and licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

**650—31.13(272C) Mandatory reporting.**

**31.13(1) Definitions.** For the purposes of this rule, the following definitions apply:

*"Knowledge"* means any information or evidence acquired from personal observation, from a reliable or authoritative source, or under circumstances that cause the licensee or registrant to believe that there exists a substantial likelihood that an act or omission may have occurred.

*"Reportable act or omission"* means any conduct that may constitute a basis for disciplinary action under the rules or statutory provisions governing the practice of dentistry, dental hygiene, or dental assisting in Iowa.

**31.13(2) Reporting requirement.** A report shall be filed with the board when a licensee or registrant has knowledge that another person licensed or registered by the board may have committed a reportable act or omission.

*a.* The report shall be filed with the board within 30 days from the date the licensee or registrant acquires knowledge of the reportable act or omission. However, in the event such reportable act or

omission poses an immediate threat to patient safety, the report shall be filed within 24 hours from the date the licensee or registrant acquires knowledge of the reportable act or omission.

*b.* The report shall contain the name and the address of the licensee or registrant who may have committed the reportable act or omission, the date, time, place and circumstances in which the reportable act or omission may have occurred, and a statement indicating how the knowledge was acquired.

*c.* The requirement to report takes effect when a licensee or registrant has knowledge that another licensee or registrant may have committed a reportable act or omission. The final determination of whether or not such act or omission has occurred is the responsibility of the board.

**31.13(3)** *Failure to report.* Failure to report knowledge of a reportable act or omission within the required time period shall constitute a basis for the initiation of a board disciplinary action against the licensee or registrant who failed to report.

**650—31.14(272C)** **Failure to report licensee or registrant.** Rescinded IAB 5/11/05, effective 6/15/05.

**650—31.15(272C)** **Immunities.** A person shall not be civilly liable as a result of filing a report or complaint with the board, 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, immunity from civil liability shall not apply if the act is done with malice.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 153.33, 272C.3, and 272C.4.

- [Filed 4/9/79, Notice 10/4/78—published 5/2/79, effective 6/6/79]
- [Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
- [Filed 9/1/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]
- [Filed 4/21/95, Notice 2/15/95—published 5/10/95, effective 6/14/95]
- [Filed 1/22/99, Notice 11/18/98—published 2/10/99, effective 3/17/99]
- [Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
- [Filed emergency 1/21/00—published 2/9/00, effective 1/21/00]
- [Filed 10/23/00, Notice 8/9/00—published 11/15/00, effective 1/1/01]
- [Filed 1/18/02, Notice 11/14/01—published 2/6/02, effective 3/13/02]
- [Filed 7/1/04, Notice 5/12/04—published 7/21/04, effective 8/25/04]<sup>1</sup>
- [Filed emergency 10/21/04—published 11/10/04, effective 12/15/04]
- [Filed 4/22/05, Notice 2/2/05—published 5/11/05, effective 6/15/05]

<sup>1</sup> Effective date of **ARC 3520B**, Items 17 and 20, delayed 70 days by the Administrative Rules Review Committee at its meeting held August 11, 2004.