

CHAPTER 7
DISCIPLINARY ACTION—UNLICENSED PRACTICE

[Previously Ch 4; Ch 5, IAB 3/2/83]

[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

[Prior to 10/3/01, see 193B—Chapter 5]

193B—7.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—7.2(544A,272C) Investigation of 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 which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the president shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

193B—7.3(544A) Civil penalties against nonregistrant. The board may impose civil penalties by order against a person who is not registered as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule shall apply.

7.3(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) shall be served upon the nonregistrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the nonregistrant may accept service personally or through authorized counsel. The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.
- c. A short, plain statement of the alleged unlawful practices.
- d. The dollar amount of the proposed civil penalty.
- e. Notice of the nonregistrant's right to a hearing and the time frame in which hearing must be requested.
- f. The address to which written request for hearing must be made.

7.3(2) Nonregistrants must request hearing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 56.1. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

7.3(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

7.3(4) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against registered architects.

7.3(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

- a. The time lapsed since the unlawful practice occurred.
- b. Evidence of reform or remedial actions.
- c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d. Whether the violation involved an element of deception.
- e. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.

- f.* The clarity of the issue involved.
- g.* Whether the violation was willful and intentional.
- h.* Whether the nonregistrant acted in bad faith.
- i.* The extent to which the nonregistrant cooperated with the board.

7.3(6) A nonregistrant may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

7.3(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Architectural Registration Boards, and other entities. Hearings shall be open to the public.

These rules are intended to implement Iowa Code section 544A.15.

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