

CHAPTER 618
COMPLAINTS, INVESTIGATIONS AND DISCIPLINE

[Prior to 5/23/84, IAC, "Disciplinary Proceedings" appeared as Ch 8]
[Prior to 5/23/84, "Licensure to Practice—Licensed Practical Nurse" appeared as Ch 4. See Ch 3.]
[Prior to 8/26/87, Nursing Board[590] Ch 4]
[Prior to 6/11/25, see Nursing Board[655] Ch 4]

Chapter rescission date pursuant to Iowa Code section 17A.7: 6/4/30

481—618.1(17A,147,152,272C) Complaints and investigations.

618.1(1) *Form and content of complaint.* The complaint will be submitted on the form deemed acceptable by the board and 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 of the allegation against the licensee.

618.1(2) *Place and time of filing complaint.* A written complaint may be delivered in person, by mail or electronically to the board office. The office address is Iowa Board of Nursing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

618.1(3) *Processing complaints.* Board staff will open a complaint file upon receiving a complaint or other appropriate information or upon its own motion.

a. If the board does not have legal jurisdiction over a matter or the complaint does not allege a violation of board rule, staff may close the complaint file administratively without investigation or review by the board. All other complaints will be sent to case review.

b. A complaint file will be labeled as such and is not a public record. A complaint file is part of the licensee's history and may be shared with another licensing authority upon request.

c. When an investigation is requested on a file, the complaint file is relabeled as an investigative file. An investigative file is not public record. The investigative file becomes a part of the licensee's history and may be shared with another licensing authority, upon request.

618.1(4) *Case review.*

a. Case review is completed by the executive director, licensing division general counsel, and chief investigator.

b. The case review team will review each complaint the board has received and take one of the following actions:

- (1) Request an investigation.
- (2) Contact the complainant to obtain additional information and return to case review for further consideration.
- (3) Recommend closure of the complaint file.
- (4) Recommend the complaint file be flagged for further discussion by the board.
- (5) Close the complaint file administratively.

618.1(5) *Board review.*

a. The board will take the recommendations of the case review and take one of the following actions:

(1) Close the complaint file without investigation. The board will 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 will 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.

618.1(6) *Investigation.* The executive director or a board investigator may conduct an investigation into the allegations of a complaint.

a. *Investigative report.* Upon completion of an investigation, the investigator will prepare a report for the board's consideration. The report will set forth the information obtained in the course of the investigation and the response, if any, of the licensee.

b. Investigative subpoenas. The executive director or 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.

(1) 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 618.2(3)"b"(3) have been satisfied.

(2) 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.

(3) Subpoena for mental health records. A subpoena for mental health records shall meet the requirements of subparagraph 618.1(6)"b"(2). The board will 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. That adequate safeguards have been established to prevent unauthorized disclosure;
3. That an express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

4. That an attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

(4) 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 ten 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.

[ARC 9161C, IAB 4/30/25, effective 6/4/25; Editorial change: IAC Supplement 6/11/25]

481—618.2(17A,147,152,272C) Board action. When reviewing complaints and investigative material, the board will:

618.2(1) Close the case without further action. The board will 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.

618.2(2) Close the case and issue 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. Letters of warning or education are not open for inspection under Iowa Code chapter 22. The board will maintain a copy of confidential letters of warning and education in the licensee's confidential investigative file. Confidential letters of warning and education may be used as evidence against a licensee in future contested case hearings before the board.

618.2(3) Request further investigation, including a peer review.

618.2(4) Determine the existence of probable cause and issue a notice of hearing and statement of charges or approve a combined statement of charges and settlement agreement.

618.2(5) 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:

- a. Board members have personally investigated the case, and
- b. Board members have combined investigative and adjudicative functions.

If the executive director or licensing division general counsel participates in the appearance, the licensee further waives any objection to having the executive director or licensing division general counsel assist the board in the contested case proceeding.

618.2(6) 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 is an open record.

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481—618.3(17A,147,152,272C) Peer review committee. Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

618.3(1) *Contract and case referral.* The board will enter into a contract with peer reviewers to provide peer review services. The board or board staff determine which peer reviewer(s) will review a case and what investigative information is referred to a peer reviewer.

618.3(2) *Written report.* Peer reviewers shall review the information provided and provide a written report to the board.

a. The written report shall contain a statement of facts, an opinion of the peer reviewer whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing 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.

618.3(3) *Confidentiality.* Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

[ARC 9161C, IAB 4/30/25, effective 6/4/25; Editorial change: IAC Supplement 6/11/25]

481—618.4(17A,147,152,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in Iowa Code section 147.55:

618.4(1) 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 in this state, which includes the following:

- a.* False representations of a 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.
- b.* Falsification of the application, credentials, or records submitted to the board for licensure or license renewal.
- c.* Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license.
- d.* Impersonating any applicant in any examination for licensure.

618.4(2) Professional incompetence. Professional incompetence includes but is not limited to:

- a.* A lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.
- b.* Deviation from the standards of learning, education, or skill ordinarily possessed and applied by other licensees in the state of Iowa acting in the same or similar circumstances.
- c.* Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.
- d.* Willful or repeated failure to practice nursing with reasonable skill and safety.
- e.* Willful or repeated failure to practice within the scope of current licensure or level of preparation.
- f.* Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.
- g.* Being adjudged mentally incompetent by a court of competent jurisdiction.
- h.* Failure to meet the standards as defined in 481—Chapter 620.
- i.* Failure to meet the standards as defined in 481—Chapter 621.
- j.* Failure to comply with the requirements of Iowa Code chapter 139A.

618.4(3) Behavior that constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession, including but not limited to:

- a.* Oral or written misrepresentation relating to degrees, credentials, licensure status, records, and applications.
- b.* Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

618.4(4) Behavior that constitutes unethical conduct or practice harmful or detrimental to the public, including but not limited to:

- a.* Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b.* Allowing another person to use one's nursing license for any purpose.
- c.* Failing to comply with any rule promulgated by the board related to minimum standards of nursing.
- d.* Improper delegation of nursing services, functions, or responsibilities.
- e.* Committing an act or omission that may adversely affect the physical or psychosocial welfare of the patient or client.
- f.* Committing an act that causes physical, emotional, or financial injury to the patient or client.
- g.* Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.
- h.* Violating the confidentiality or privacy rights of the patient or client.
- i.* Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation, or economic or social status.
- j.* Failing to assess, accurately document, evaluate, or report the status of a patient or client.
- k.* Misappropriating or attempting to misappropriate medications, property, supplies, or equipment of the patient, client, or agency.

l. Fraudulently or inappropriately using or permitting the use of prescriptions, obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.

m. Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs or while impaired by the use of pharmacological agents or medications, even if legitimately prescribed.

n. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

o. Habitual intoxication or addiction to the use of drugs, including:

(1) The inability of a licensee to practice with reasonable skill and safety by reason of excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs that may impair a licensee's ability to practice with reasonable skill or safety.

p. Engaging in behavior that is contradictory to professional decorum.

q. Failing to report suspected wrongful acts or omissions committed by a licensee of the board.

r. Failing to comply with an order of the board.

s. For an advanced registered nurse practitioner, prescribing, dispensing, administering, or distributing drugs:

(1) In an unsafe manner.

(2) Without accurately documenting it or without assessing, evaluating, or instructing the patient or client.

(3) To individuals who are not patients or who are outside of the licensee's specialty area.

t. Engaging in repeated verbal or physical conduct that interferes with another health care worker's performance or creates an intimidating, hostile, or offensive work environment.

u. Failing to properly safeguard or secure medications.

v. Failing to properly document or perform medication wastage.

618.4(5) For purposes of this subrule, "patient" is defined to include the patient and the patient's family or caretakers who are present with the patient while the patient is under the care of the licensee. Behavior that constitutes unethical conduct or practice harmful or detrimental to the public includes but is not limited to professional boundaries violations of:

a. Sexual contact with a patient, regardless of patient consent.

b. Making lewd, suggestive, demeaning, or otherwise sexual comments, regardless of patient consent.

c. Participating in, initiating, or attempting to initiate a sexual, emotional, social, or business relationship with a patient, regardless of patient consent.

d. Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.

e. Repeatedly divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.

f. Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

618.4(6) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

618.4(7) Fraud in representation as to skill or ability.

618.4(8) Use of untruthful or improbable statements in advertisements.

618.4(9) Willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

618.4(10) Other acts or offenses as specified by board rule, including:

- a. Failing to provide written notification of a change of address to the board within 30 days of the event.
- b. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory, or country.
- c. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.
- d. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.
- e. Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements, with training in child or dependent adult abuse identification and reporting, or exceptions within the time period provided.
- f. Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 481—subrule 621.4(5) or exceptions within the time period provided.
- g. Failing to respond to or comply with a board investigation or subpoena.
- h. Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.
- i. Violating an initial agreement or contract with the Iowa professional health program.

618.4(11) Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact or engaging in practice of nursing in Iowa on an inactive license.

618.4(12) In accordance with Iowa Code section 152.10(2):

- a. Continuing to practice while knowingly having an infectious or contagious disease that could be harmful to a patient's welfare without taking precautions to meet the current standard of care.
- b. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority of another state, territory, or country.
- c. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state that has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3 and that has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction that does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.
- d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.
- e. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.
- f. Being unable to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

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481—618.5(17A,147,152,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation. A voluntary surrender of a license during the pendency of a complaint or investigation shall be considered discipline and shall have the same force and effect as an order of revocation.

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481—618.6(272C) Disciplinary hearing—fees and costs.

618.6(1) Fees and costs assessed by the board pursuant to Iowa Code section 272C.6(6)“a” will be calculated by the board’s executive director and be entered as part of the board’s final disciplinary order. The board’s final disciplinary order will specify the time period in which the fees and costs shall be paid by the licensee.

618.6(2) Failure of the licensee to pay the fees and costs assessed herein in the time specified in the board’s final disciplinary order may constitute a violation of a lawful order of the board.

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