

CHAPTER 1
ADMINISTRATIVE AND REGULATORY AUTHORITY

[Prior to 5/4/88, see 470—135.1 to 135.10]

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

653—1.1(17A,147) Definitions. The following definitions shall be applicable to the rules of the board of medicine:

“Acupuncture” shall mean a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

“Acupuncturist” shall mean a person licensed to practice acupuncture in this state.

“Alternate member” shall mean a person who is qualified under Iowa Code section 148.2A to substitute for a board member who is disqualified or becomes unavailable for any other reason for a contested case hearing. An alternate board member is deemed a member of the board only for the hearing panel(s) for which the alternate board member serves.

“Board” shall mean the board of medicine of the state of Iowa.

“Department” shall mean the Iowa department of public health.

“Director” shall mean the director of the department.

“Disciplinary proceeding” shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

“License” shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under the laws of the state of Iowa.

“Licensee” shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under the laws of the state of Iowa.

“Licensee discipline” or *“discipline”* shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional care.

“Malpractice” shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of the physician’s profession.

“Medical practice Acts” shall refer to Iowa Code chapters 147 and 148.

“Order” shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

“Peer review” shall mean evaluation of professional services rendered by a professional practitioner.

“Peer reviewer(s)” shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

“Physician” shall mean a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the laws of this state.

“Practice of acupuncture” means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medical concepts.

“The practice of medicine and surgery” shall mean holding one’s self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition. This rule shall not apply to licensed podiatrists, chiropractors, physical therapists, nurses, dentists, optometrists, acupuncturists, pharmacists, and other licensed health professionals who are exclusively engaged in the practice of their respective professions.

“*Prescription drugs*” means drugs, medicine and controlled substances which by law can only be prescribed for human use by persons authorized by law.

“*Profession*” shall mean medicine and surgery, osteopathic medicine and surgery, or acupuncture.

“*Respondent*” shall mean a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, or acupuncture.

“*Rule*” shall mean a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 148, and 148E.

653—1.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 147, 148, 148E, and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, and acupuncture; the imposition of discipline upon licensees as provided by statute or rule; and the operation of a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability and who self-report or who are referred by the board to the committee.

653—1.3(17A) Organization of board. The board:

1.3(1) Makes policy relative to matters involving medical and acupuncture education, licensure, practice, and discipline.

1.3(2) Conducts business according to board-approved policy.

1.3(3) Elects a chairperson, vice chairperson and a secretary from its membership at the last regular board meeting prior to May 1 or at another date in April scheduled by the board.

1.3(4) A majority of the members of the board shall constitute a quorum. Official action, including filing of formal charges or imposition of discipline, requires a majority vote of members present.

1.3(5) Has the authority to:

a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, the practice of acupuncture by acupuncturists, and the practice of genetic counseling by genetic counselors.

b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, the practice of acupuncture by licensed acupuncturists, and the practice of genetic counseling by licensed genetic counselors.

c. Determine in any case whether an investigation or a disciplinary action is warranted.

d. Initiate and prosecute disciplinary proceedings.

e. Impose licensee discipline.

f. Request that the attorney general file appropriate court action for enforcement of the board’s authority relating to licensees or other persons who are charged with violating statutes or rules the board administers or enforces.

g. Establish and register peer reviewers.

h. Refer to one or more registered peer reviewers for investigation, review, and report to the board any complaint or other evidence of an act or omission which the board has reasonable grounds to believe may constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

i. Determine eligibility for license renewal and administer the renewal of licenses.

j. Establish and administer rules for continuing education and mandatory training requirements as a condition of license renewal.

k. Establish fees for examination, fees for the issuance of licenses and fees for other services provided by the board with the intention of producing sufficient revenue to cover the expenses involved with operation of the board and the board office.

l. Establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include:

(1) Executive committee. The membership shall be composed of the elected officers of the board and two at-large members appointed by the chairperson. At least one public member shall be appointed to the executive committee. The executive committee duties may include, but are not limited to:

1. Guidance and supervision of the executive director.
2. Budgetary review and recommendations to the board.
3. Review and recommendations to the board on rules and legislative proposals.
4. Study and recommendations to the board on practice issues and policy.

(2) Screening committee. The committee reviews complaints and makes recommendations to the board on appropriate action including further investigation or referral to the board for closure.

(3) Licensure committee. Its duties may include:

1. Recommending appropriate action on completed applications for licensure.
2. Conducting interviews with applicants when appropriate.
3. Reviewing licensure examination matters.
4. Reviewing and recommending to the board appropriate changes in licensure application forms.
5. Reviewing and making recommendations to the board regarding volunteer physician applicants who wish to participate in the state-indemnified volunteer physician program and who are under investigation or who have or have had disciplinary action against a license in the present or in the past.

6. Making recommendations on licensure policy issues.

(4) Monitoring committee. The committee oversees the monitoring of licensees under board orders and makes recommendations to the board on these matters.

m. Establish the Iowa physician health committee as its licensee review committee.

n. Advise the director of the department of public health in evaluating potential candidates for the position of executive director, consult with the director in the hiring of the executive director, and review and advise the director on the performance of the executive director in the discharge of the executive director's duties.

o. Adopt administrative rules and pursue legislation where necessary to conduct the board's business.

p. Establish a pool of up to ten alternate board members to serve on a hearing panel when a sufficient number of board members is unavailable to hear a contested case.

1.3(6) Guide and direct a full-time executive director who:

a. Is not a member of the board.

b. Under the supervision of the director of the department of public health and the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, the practice of acupuncture, and the practice of genetic counseling; issuance of subpoenas on behalf of the board or a committee of the board during the investigation of possible violations; and enunciation of policy on behalf of the board.

1.3(7) Establishes, in accordance with Iowa Code section 148.2A, a pool of alternate board members.

a. At the beginning of each fiscal year, the executive director presents a list of persons who are qualified under Iowa Code section 148.2A to serve as alternate board members for the year beginning September 1.

b. The executive director shall present the board-approved list of alternate board members to the governor for approval.

c. Once the governor approves an alternate board member, the executive director or designee may assign the approved member to hear a contested case when an approved number of board members is unavailable.

653—1.4(17A) Official communications. All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686.

653—1.5(17A) Office hours. The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

653—1.6(17A) Meetings. The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office or on the board's website at www.medicalboard.iowa.gov.

Except as otherwise provided by statute, all board meetings shall be open, and the public shall be permitted to attend the meetings.

653—1.7(17A,147) Petition to promulgate, amend or repeal a rule.

1.7(1) An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

1.7(2) The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. The petitioner shall indicate deletions to the current rule with brackets and additions to the current rule with underlining.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

1.7(3) The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA BOARD OF MEDICINE and shall be deemed filed when received by the executive director.

1.7(4) Upon receipt of the petition the executive director shall:

a. Mail within ten days a copy of the petition to any parties named in it. The petition shall be deemed served on the date of mailing to the last-known address of the party being served.

b. Advise petitioner that petitioner has 30 days within which to submit written views.

c. Schedule oral presentation of petitioner's view if the board so directs.

d. Within 60 days after date of submission of the petition, either deny the petition or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

1.7(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

653—1.8(17A) Public hearings prior to the adoption, amendment or repeal of any rule.

1.8(1) *Scheduling a public hearing.* The board may at its discretion hold a public hearing, or it shall hold a public hearing upon the written request of at least 25 interested persons, a governmental subdivision, an agency, or an association of 25 persons.

a. If the board chooses to hold a public hearing, it will announce the date, time, and location in the Iowa Administrative Bulletin.

b. If the board has not scheduled a public hearing and a person or an organization wishes to request one, a written request for a public hearing shall be received by the executive director within 20 days after the notice of intended action has been published.

(1) The executive director shall schedule a public hearing if the request(s) meets the requirements of this rule.

(2) The executive director shall set the date, time, and location of the public hearing.

(3) The individual or organization requesting the public hearing shall be notified of the date, time, and location of the public hearing by certified mail.

1.8(2) *Proceedings at the public hearing.* The chairperson of the board shall serve as the presiding officer or appoint a presiding officer over the public hearing.

a. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled.

(1) Any individual(s) desiring to make written comments in advance of the hearing shall submit these comments to the executive director. The presiding officer shall accept written comments at the hearing.

(2) Any individual(s) desiring to make an oral presentation shall be present at the hearing and ask to speak.

b. The authority of the presiding officer during the public hearing includes:

(1) Setting a time limit on oral presentations if necessary;

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing;

(3) Ruling that the oral presentation or discussion is not pertinent to the hearing; and

(4) Accepting any written testimony.

c. The conduct of the presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive written and oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within 30 days of the date of hearing the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

653—1.9(17A) Declaratory orders.

1.9(1) *Petition for declaratory order.* Any person may file a petition with the board of medicine for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by the board office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board office with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICINE	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}
PETITION FOR DECLARATORY ORDER	

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.

3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by 1.9(7).

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

1.9(2) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 1.9(6)“c” to whom notice is required by any provision of law. The board may also give notice to any other persons.

1.9(3) Intervention.

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

c. A petition for intervention shall be filed with the executive director at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICINE		
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor’s standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

1.9(4) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

1.9(5) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the board office.

1.9(6) Service and filing of petitions and other papers.

a. When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the executive director at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 653—25.11(17A).

1.9(7) Consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

1.9(8) Action on petition.

a. Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board shall take action on the petition as required by Iowa Code section 17A.9(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 25.11(4).

1.9(9) Refusal to issue order.

a. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

(3) The board does not have jurisdiction over the questions presented in the petition.

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

1.9(10) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

1.9(11) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

1.9(12) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of medicine. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapters 17A, 21, 68B, 148, 148E, 252J, 261, and 272C.

653—1.10(68B) Selling of goods or services by members of the board or Iowa physician health committee (IPHC).

1.10(1) *Application of the rule.* The board members and members of the IPHC shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department except as authorized by this rule.

1.10(2) *Consent.* Consent shall be given by a majority of the members of the board. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department.

d. The selling of the good or service does not result in the official's selling a good or service to the department on behalf of the individual, association, or corporation.

1.10(3) *Authorized sales.* Sales may be authorized under the following conditions:

a. A member of the board or IPHC may sell goods or services to any individual, association, or corporation regulated by any division within the department, other than the board or committee on which that official serves. This consent is granted because the sale of such goods or services does not affect the member's duties or functions on the board or IPHC.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board or IPHC member's duties or functions on the board or IPHC, respectively. In the event an individual, association, or corporation regulated by the board, to whom a board or IPHC member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board or IPHC member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board or IPHC member to a member of the public, that board or IPHC member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board or IPHC, or would otherwise present a conflict of interest.

1.10(4) *Application for consent.* Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department, an official must obtain prior written consent unless the sale is specifically allowed in subrule 1.10(3). The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

1.10(5) *Limitation of consent.* Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this chapter does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

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