CHAPTER 12
CONTESTED CASES
[Prior to 3/20/91, Corrections Department[291]]

201—12.1(17A) Notice of noncompliance. When the appropriate division director of the department of corrections determines that an agency or facility accredited by the department is not in compliance with state standards, or when an order of closure is issued under 201—subrule 50.5(6), the appropriate administrator shall be notified of the noncompliance status. The notice shall specify:

1. The statute(s) and any rule(s) alleged to have been violated.
2. The deficiencies cited.
3. The time period allowed for submission of an acceptable plan of compliance if submission of a plan is permitted.

The administrator of the facility or agency may submit the plan of compliance within the appropriate time limitation or may request a hearing pursuant to rule 12.3(17A).

201—12.2(17A) Informal settlement. The director or the respondent may request that an informal conference be held to determine whether the noncompliance matter can be resolved in a just manner in furtherance of the public interest. Neither the director nor respondent is required to use this informal procedure. If the director and respondent agree to negotiate a settlement, the various points of the settlement, including a stipulated statement of facts, shall be set forth in writing and shall be binding on both parties.

201—12.3(17A) The right to request hearing. A hearing shall be granted to any agency or facility aggrieved by action of the department of corrections when the right to a hearing is granted by the state or federal law or constitution except as limited herein. A hearing will not be granted when a state or federal law or regulation provides for a different forum for appeals. A prematurely filed appeal may be dismissed.

201—12.4(17A) Order for hearing. Upon a determination that a plan of compliance is not sufficient to effectuate compliance, or upon request by the agency or facility pursuant to rule 12.3(17A), the department shall issue an order fixing the time and place for hearing. A written notice of hearing together with a statement of the charges shall be mailed to the administrator of the agency or facility at the business address at least ten days prior to the hearing by certified mail with return receipt requested or may be served as in the manner of original notices. Delivery of personal notice to the agency or facility or refusal by the agency or facility to accept certified mailing may constitute commencement of the contested case proceedings.

201—12.5(17A) Notice of hearing. The notice of hearing shall state:

12.5(1) The date, time and place of hearing.

12.5(2) A statement that the party may be represented by legal counsel at all stages.

12.5(3) A statement of the legal authority and jurisdiction under which the hearing is to be held.

12.5(4) A reference to the statutes and rules involved.

12.5(5) A short and simple statement of the deficiencies cited.

12.5(6) A statement that the respondent has the right to appear at a hearing and be heard.

12.5(7) A statement requiring the respondent to submit an answer, as outlined in rule 12.6(17A).

12.5(8) A statement requiring the respondent within the period of five days after the receipt of the notice of hearing to:

a. Acknowledge receipt of the notice of hearing on the form provided with the notice.

b. State whether the respondent requests a change in the date and time of hearing.

c. Furnish the director with a list of potential witnesses and their current addresses which the respondent intends to have called. The department of corrections shall not pay witness expenses.

201—12.6(17A) Form of answer. The answer shall be captioned "BEFORE THE IOWA DEPARTMENT OF CORRECTIONS", and shall be titled: "ANSWER". The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all areas of noncompliance which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relative to the issue at hand and which may be of assistance in the ultimate determination of the case.

201—12.7(17A) Continuances. A party has no automatic right to a continuance or delay of the hearing procedure or schedule. However, a party may request a continuance no later than ten days prior to the date set for hearing. Within ten days of the date set for hearing, no continuance shall be granted except for extraordinary, extenuating or emergency circumstances. The administrative law judge shall have power to grant or deny request for continuances.

201—12.8(17A) Prehearing conference. The administrative law judge, either on the administrative law judge's own motion or at the request of the respondent, may hold a prehearing conference. The prehearing conference shall be for the purpose of identifying and premarking exhibits and other documents as well as determining stipulations or other means of limiting the issues of the hearing. Neither the department nor respondent shall be required to stipulate to any issues. The prehearing conference, if held, may be done through a telephone conference call, with all parties being involved.

201—12.9(17A) Appearance. The administrator of the agency or facility shall have the right to appear in person and have legal counsel before the administrative law judge at the facility or agency administrator's expense.

201—12.10(17A) Subpoena powers. After service of the notice of hearing, the following procedures are available to the parties:

1. Subpoenas for persons, books, papers, records and other real evidence shall be issued to a party or for a party upon request. Applications should be made to the director and the director shall issue all subpoenas for both parties upon request.
2. Discovery procedures applicable to civil actions are available to the parties in proceedings under these rules.
3. Evidence obtained by subpoena or through discovery shall be admissible at the hearing under rule 12.16(17A) or by statute.
4. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant may be available to a party upon request.

201—12.11(17A) Refusal to obey subpoena. In the event of a refusal to obey a subpoena, the director may petition the district court for its enforcement.

The administrative law judge may also administer oaths and affirmations, take or order that depositions be taken and grant immunity to a witness from disciplinary procedures initiated by the director which might otherwise result from the testimony to be given by the witness.

201—12.12(17A) Failure of a respondent to appear. If a respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the administrative law judge may proceed to conduct the hearing and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

201—12.13(17A) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party at the expense of the requesting party. The recording or the stenographic notes of oral proceedings or the transcription thereof shall be filed and maintained in

accordance with the provisions of Iowa Code section 17A.12(7). Any party to a proceeding may record at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

201—12.14(17A) Hearings. A hearing may be conducted before an administrative law judge in accordance with Iowa Code section 17A.11. The administrative law judge shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections. The administrative law judge has the right to conduct a direct examination of the testimony of a witness at the time the testimony is given or at a later stage during the proceeding. Direct examination and cross-examination by the administrative law judge are subject to objections properly raised in accordance with the rules of evidence noted in subrules 12.16(1) and 12.16(2).

201—12.15(17A) Order of proceedings. Before testimony is presented, the record shall show the identity of the administrative law judge, the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings shall generally be conducted in the following order, subject to the modification at the discretion of the administrative law judge conducting the proceedings.

1. The presiding officer or designee may read a summary of the charges and answers thereto, and other responsive pleadings filed by the respondent prior to the hearing.
2. The assistant attorney general or other person representing the state or department interest before the administrative law judge shall make a brief opening statement which will be a summary of the charges and the witnesses and documents to support such charges.
3. The respondent or respondents shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent.
4. Presentation of evidence on behalf of the department.
5. The presentation of evidence on behalf of the respondent(s).
6. Rebuttal evidence on behalf of the state or department, if any.
7. Rebuttal evidence on behalf of the respondent(s), if any.
8. Closing arguments first on behalf of the state or department, then on behalf of the respondent, and then on behalf of the state or department, if any.

201—12.16(17A) Rules of evidence—documentary evidence—official notice.

12.16(1) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The administrative law judge will base the findings upon substantial evidence.

12.16(2) Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

12.16(3) Subject to above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be submitted in writing in certified form, e.g., affidavit, sworn statements or certified documents.

12.16(4) Documentary evidence may be received in the form of copies if the original is not readily available. Documentary evidence may be received in the form of excerpts if the entire document is not relevant. Accurate copies of any document should be provided at the time of the hearing. Upon request, the parties shall be given the opportunity to compare the copy with the original, if available.

12.16(5) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

12.16(6) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practical time, either before or during the hearing or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness of the parties does not require an opportunity to contest such facts.

201—12.17(17A) Proposed decision.

12.17(1) The decision rendered by the administrative law judge is a proposed decision and subject to the review provisions of rule 12.19(17A).

a. A proposed decision shall be in writing and shall consist of the following parts.

(1) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

(2) Conclusions of law. The conclusions shall be supported by cited authority or reasoned opinion.

(3) Order. The decision or order which sets forth the action to be taken or the disposition of the case.

b. The decision may include any of the following conclusions.

(1) The plan of compliance is adequate.

(2) The plan of compliance is not adequate, however, a specified time period will be allowed for specified conditions to be met.

(3) Compliance is not adequate and the appropriate action is to be taken by the department.

12.17(2) Reserved.

201—12.18(17A) Notification of proposed decision. All parties to a proceeding herein will be promptly furnished with a copy of any proposed decision or order.

201—12.19(17A) Review of proposed decision—procedures and requirements.

12.19(1) A party dissatisfied with a proposed decision may request the director to review or modify the decision. The department may request review if it is dissatisfied with the proposed decision. The request for review is begun by serving on the director, either in person or by certified mail, a notice of the request for review within ten days after the service of the proposed decision or order on the appealing party.

12.19(2) Within ten days after serving notice of appeal, the requesting party shall serve copies of the exceptions, if any, together with any brief and arguments on the department and all other parties, if any. Other parties shall have ten days after service of exceptions and briefs on the director to file a responsive brief and argument. Except for the request for review, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by the director.

12.19(3) Oral argument of the request for review is discretionary but may be required by the director upon the director's own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted or required, the director shall notify all parties of the date, time and place for an oral presentation, if any.

12.19(4) The record on appeal shall be the entire record made before the administrative law judge. The director is not bound by any proposed findings of fact, conclusions of law or order but is free to accept, affirm, modify or reject such proposed findings, conclusions or order. The director may consider other evidence or information, with notice to all parties, which was not originally presented at the hearing. The director may give such new evidence or information whatever value or weight the director desires.

201—12.20(246) Motion for rehearing.

12.20(1) Within 20 days after issuance of a proposed decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought. Within 20 days after issuance of a proposed decision, any party may file an application for a rehearing upon

the director and all other parties who are not joining in the application. The application shall state the specific grounds for rehearing and the relief sought.

12.20(2) Upon a rehearing, the director shall consider facts not presented in the original proceeding, if:

a. Such facts arose after the original proceedings; or

b. The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or

c. The party offering the additional evidence was misled by any party as to the necessity of offering such evidence at the original proceeding, except that this subrule shall not relieve any party of its own obligation to control its own evidence and defense.

12.20(3) The decision made upon rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

201—12.21(17A) Final decision. The final decision shall be made by the director. The final decision shall be in writing and shall consist of the parts as outlined in subrule 12.17(1). A copy of the decision and order shall immediately be sent by certified mail return receipt requested to the administrator of the facility or agency at the business address or may be served as in the manner of original notices upon the facility or agency. The proposed decision becomes final ten days after issuance if review is not requested.

201—12.22(17A) Judicial review and appeal. Judicial review of the director's action may be sought in accordance with the Iowa Administrative Procedure Act, from and after the date of the director's order.

201—12.23(17A) Ex parte communications—bias. Unless required for the disposition of ex parte matters, specifically authorized by statute, no party to a contested case or person with a personal interest in that case may communicate directly or indirectly with the administrative law judge, nor shall the presiding officer communicate directly or indirectly with that party or person, concerning any issues of fact or law in that case. When such a communication occurs, each party shall be given written notice of the communication, containing either the text of a written communication or a summary of an oral communication, and the time, place and means of the communication. After the notice all parties have the right, upon written demand, to respond to the communication at a hearing convened especially for that purpose.

12.23(1) *Inclusive in the record.* Any ex parte communication prohibited by Iowa Code section 17A.17(2) received by the administrative law judge shall be included in the record. If written, the text shall be entered into the record; if oral, the administrative law judge shall summarize the communication and enter that summary into the record.

12.23(2) *Penalties.* If a party knows or reasonably should know that the communication was prohibited by Iowa Code section 17A.17(2), the director may censure that person or suspend or revoke that person's right to practice before that agency. In the case of prohibited communication which has a substantial and adverse impact upon the opposing party's case, the director may enter a decision against the party making the communication. Any administrative law judge who violates the provisions of section 17A.17 or of this rule may be censured, suspended or dismissed by the director of the department of corrections.

201—12.24(17A) Emergency action. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates the finding to that effect in the order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.19.

[Filed emergency 9/9/83—published 9/28/83, effective 10/1/83]
[Filed 11/18/83, Notice 9/28/83—published 12/7/83, effective 1/11/84]
[Filed emergency 2/20/91—published 3/20/91, effective 2/20/91]