

CHAPTER 20  
CONTESTED CASES  
[Prior to 1/6/16, see 655—Chapter 4]

**655—20.1(17A,272C) Scope and applicability.** This chapter applies to contested case proceedings conducted by the Iowa board of nursing.  
[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.2(17A,272C) Definitions.** Except where otherwise specifically defined by law:

“*Board*” means a quorum of members of the Iowa board of nursing.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5), including but not limited to licensee disciplinary proceedings, adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact, license denial proceedings, and license reinstatement proceedings.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified in the order.

“*Party*” means the state of Iowa, as represented by the office of the attorney general, and the respondent or applicant.

“*Probable cause*” means a reasonable ground for belief in the existence of facts warranting the specified proceeding.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.3(17A,272C) Time requirements.** Time shall be computed as provided in Iowa Code section 4.1(34). For good cause, the presiding officer may lengthen or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before lengthening or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

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**655—20.4(17A,272C) Applicability of Iowa Rules of Civil Procedure.** Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.5(17A,272C) Combined statement of charges and settlement agreement.** Upon a determination by the board that probable cause exists to take public disciplinary action, the board and the licensee may enter into a combined statement of charges and settlement agreement.

**20.5(1)** No licensee is entitled to be offered a combined statement of charges and settlement agreement.

**20.5(2)** Entering into a combined statement of charges and settlement agreement is completely voluntary.

**20.5(3)** The combined statement of charges and settlement agreement shall include a brief statement of the charges, the circumstances that led to the charges, and the terms of settlement.

**20.5(4)** A combined statement of charges and settlement agreement shall constitute the commencement and resolution of a contested case proceeding. By entering into a combined statement of charges and settlement agreement, the licensee waives the right to a contested case hearing on the matter.

**20.5(5)** A combined statement of charges and settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.6(17A,272C) Notice of hearing.**

**20.6(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service, as provided in the Iowa Rules of Civil Procedure; or
- b. Certified restricted mail, return receipt requested; or
- c. Signed acknowledgment accepting service; or
- d. When service cannot be accomplished using the above methods:
  - (1) An affidavit shall be prepared outlining the measures taken to attempt service; and
  - (2) Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent.

The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

**20.6(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties, including the name, address and telephone number of the assistant attorney general representing the state;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing settlement;
- h. Identification of the presiding officer;
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11, that the presiding officer be an administrative law judge;
- j. Notification of the time period in which the respondent may file an answer; and
- k. Notification of the respondent's right to request a closed hearing, if applicable.

**20.6(3) Public record.** Notices of hearing are permanent public records open for inspection under Iowa Code chapter 22.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.7(17A,272C) Statement of charges.** In the event the board finds there is probable cause for taking public disciplinary action against a licensee, the board shall file a statement of charges. The statement of charges shall be incorporated within the notice of hearing. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. Every statement of charges prepared by the board shall be reviewed by the office of the attorney general before it is filed. Statements of charges are permanent public records open for inspection under Iowa Code chapter 22.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.8(13,272C) Legal representation.** Following the issuance of a notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in the contested case. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.9(17A,272C) Presiding officer in a disciplinary contested case.** The presiding officer in a disciplinary contested case shall be the board. When acting as presiding officer, the board may request that an administrative law judge perform certain functions as an aid to the board, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, and drafting the written decision for review by the board.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.10(17A,272C) Presiding officer in a nondisciplinary contested case.**

**20.10(1)** Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of the notice of hearing.

**20.10(2)** The board may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- b. An administrative law judge is unavailable to hear the case within a reasonable time.
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f. The request was not timely filed.
- g. The request is not consistent with a specified statute.

**20.10(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if an administrative law judge will not be available.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.11(17A,272C) Disqualification.**

**20.11(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party.
- b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties. If the licensee elects to appear before the board in the investigative process, the licensee waives this provision.
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties.
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years.
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case.
- f. Has a spouse or relative within the third degree of relationship who:
  - (1) Is a party to the case, or an officer, director or trustee of a party;
  - (2) Is a lawyer in the case;
  - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
  - (4) Is likely to be a material witness in the case.
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**20.11(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include:

- a. General direction and supervision of assigned investigators;
- b. Unsolicited receipt of information which is relayed to assigned investigators;
- c. Review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding; or
- d. Exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 20.11(3) and 20.28(8).

By electing to participate in an appearance before the board, 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 the board member "personally investigated" the matter under this provision.

**20.11(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**20.11(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11(3). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The individual against whom disqualification is asserted shall make the initial determination as to whether disqualification is required. If the individual elects not to disqualify, the board shall make the final determination as to disqualification of that individual as part of the record in the case.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.12(17A,272C) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

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**655—20.13(17A,272C) Telephone or electronic proceedings.** The presiding officer may resolve prehearing matters by telephone conference in which all parties have an opportunity to participate. Contested case hearings will generally not be held by telephone or electronic means in the absence of consent by all parties under compelling circumstances. Nothing shall prohibit a witness from testifying by telephone or electronic means pursuant to paragraph 20.26(3) "b."

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.14(17A,272C) Consolidation—severance.**

**20.14(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**20.14(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

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**655—20.15(17A,272C) Appearance.** The respondent or applicant may be represented by an attorney. The attorney must file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney must fully comply with Iowa Court Rule 31.14.

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**655—20.16(17A,272C) Answer.** An answer may be filed within 20 days of service of the notice of hearing and statement of charges. An answer shall specifically admit, deny, or otherwise answer all material allegations of the statement of charges to which it responds. It shall state any facts supporting any affirmative defenses and contain as many additional defenses as the respondent may claim. An answer shall state the name, address and telephone number of the person filing the answer. Any allegation in the statement of charges not denied in the answer is considered admitted. The presiding officer may

refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

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**655—20.17(17A,272C) Filing and service of documents.**

**20.17(1) Filing—when required.** After the notice of hearing, all documents in a contested case proceeding shall be filed with the board.

**20.17(2) Filing—how made.** Filing shall be made by delivering or mailing the document to the board office located at 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685.

**20.17(3) Filing—when made.** A document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to the board office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**20.17(4) Service—when required.** Except as otherwise provided by law, every document filed in a contested case proceeding shall be simultaneously served upon each of the parties of record to the proceeding, including the assistant attorney general representing the state. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**20.17(5) Service—how made.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order, so long as there is proof of mailing.

**20.17(6) Electronic service.** Service may be made upon a party or attorney by electronic mail (e-mail) if the person consents in writing in that case to be served in that manner. The written consent shall specify the e-mail address for such service. The written consent may be withdrawn by written notice served on the parties or attorneys.

**20.17(7) Proof of mailing/e-mailing.** Proof of mailing/e-mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail, state interoffice mail, or e-mail when permitted by 655 IAC 20.17(6).

(Date)

(Signature)

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.18(272C) Investigative file.** The board's investigative file is available to the respondent or applicant upon request only after the commencement of a contested case and only prior to the resolution of the contested case. A licensee who elects to enter into a combined statement of charges and settlement agreement is not entitled to request the investigative file. In accordance with Iowa Code section 272C.6(4), information contained within an investigative file is confidential and may only be used in connection with the disciplinary proceedings before the board.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.19(17A,272C) Discovery.**

**20.19(1)** The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

**20.19(2)** The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

*a.* Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

*b.* Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

*c.* Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

*d.* Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

**20.19(3)** The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship.

**20.19(4)** Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

**20.19(5)** Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

**20.19(6)** A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within 10 days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

**20.19(7)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

#### **655—20.20(17A,272C) Issuance of subpoenas in a contested case.**

**20.20(1)** Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas shall be issued by the executive director or designee upon a written request that complies with the requirements of this rule. A request for a subpoena of mental health records must confirm that the conditions described in subrule 20.20(3) have been satisfied prior to the issuance of the subpoena. The executive director or designee may refuse to issue a subpoena if the request does not comply with the requirements of this rule.

**20.20(2)** A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- a.* The name, address and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested and the date, time and location for production or inspection and copying; and
- f.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.20(3) have been satisfied.

**20.20(3)** In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a.* The nature of the issues in the case reasonably justifies the issuance of the requested 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 the release of the records at issue.

**20.20(4)** Each subpoena shall contain, as applicable, the following:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production or inspection and copying;
- h.* The time within which the motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the executive director or designee;
- j.* The date of issuance;
- k.* A return of service.

**20.20(5)** Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**20.20(6)** Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case 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.

**20.20(7)** Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may 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.

**20.20(8)** 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 in accordance with subrule 20.17(5) a notice of appeal within 10 days after service of the decision of the administrative law judge.

**20.20(9)** If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

### **655—20.21(17A,272C) Motions.**

**20.21(1)** No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**20.21(2)** Any party may file a written response to a motion within 10 days after the motion is served, unless the time period is lengthened or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**20.21(3)** The presiding officer may schedule oral argument on any motion.

**20.21(4)** Motions pertaining to the hearing must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or the presiding officer.

**20.21(5)** Dispositive motions, such as motions for summary judgment or motions to dismiss, must be filed with the board and served on all parties to the contested case proceeding at least 30 days prior to the scheduled hearing date, unless otherwise ordered or permitted by the presiding officer. Any party may file a written response to a dispositive motion within 10 days after the motion is served, unless the time for response is otherwise lengthened or shortened by the presiding officer.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.22(17A,272C) Prehearing conferences.**

**20.22(1)** Any party may request a prehearing conference. Prehearing conferences shall be conducted by the executive director, who may request that an administrative law judge conduct the prehearing conference. A written request for prehearing conference or an order for prehearing conference on the executive director's own motion shall be filed not less than 7 days prior to the hearing date, unless authorized by the person conducting the prehearing conference. A prehearing conference shall be scheduled not less than 3 business days prior to the hearing date.

**20.22(2)** Each party shall be prepared to discuss the following subjects at the prehearing conference:

*a.* Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

*b.* Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the executive director or administrative law judge at the prehearing conference. Other than rebuttal exhibits, exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

*c.* The entry of a scheduling order to include deadlines for completion of discovery.

*d.* Stipulations of law or fact.

*e.* Stipulations on the admissibility of exhibits.

*f.* Identification of matters which the parties intend to request be officially noticed.

*g.* Consideration of any additional matters which will expedite the hearing.

**20.22(3)** Prehearing conferences shall be conducted by telephone unless otherwise ordered.

**20.22(4)** A party must seek intra-agency appeal to the board of prehearing rulings made by an administrative law judge in order to adequately exhaust administrative remedies. Such appeals must be filed within 10 days of the date of the issuance of the challenged ruling but no later than the time for compliance with the order or the date of hearing, whichever is first.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.23(17A,272C) Continuances.** Unless otherwise provided, requests for continuance shall be filed with the board.

**20.23(1)** A written request for a continuance shall:

*a.* Be made at the earliest possible time and no less than 7 days before the hearing except in cases of unanticipated emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's attorney.

**20.23(2)** No request for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may allow an oral application for continuance at the contested case hearing only in the event of an unanticipated emergency.

**20.23(3)** The presiding officer or the executive director has the authority to grant or deny a request for a continuance in accordance with this subrule. The executive director or an administrative law judge may enter an order granting an uncontested request for a continuance. Upon consultation with the board chair,



the executive director or an administrative law judge may deny an uncontested request for a continuance or may rule on a contested request for continuance.

**20.23(4)** In determining whether to grant a continuance, the presiding officer or the executive director may require documentation of any grounds for continuance and may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The public interest;
- d.* The likelihood of settlement;
- e.* The existence of an emergency;
- f.* Any objection;
- g.* Any applicable time requirements;
- h.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- i.* The timeliness of the request; and
- j.* Other relevant factors.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.24(17A,272C) Settlement agreements.**

**20.24(1)** A contested case may be resolved by settlement agreement. Settlement negotiations may be initiated by any party at any stage of a contested case. No party is required to participate in the settlement process.

**20.24(2)** If the respondent initiates or consents to settlement negotiations, the assistant attorney general prosecuting the case may discuss settlement with the board chair without violating the prohibition against ex parte communications in Iowa Code section 17A.17 and without disqualifying the board chair from participating in the adjudication of the contested case. The full board shall not be involved in settlement negotiations until a proposed settlement agreement executed by the respondent is submitted to the board for approval.

**20.24(3)** By signing the proposed settlement agreement, the respondent authorizes an assistant attorney general to have ex parte communications with the board related to the terms of the proposed settlement. If the board fails to approve the proposed settlement agreement, it shall be of no force or effect to either party and shall not be admissible at hearing. Upon rejecting a proposed settlement agreement, the board may suggest alternative terms of settlement, which the respondent is free to accept or reject.

**20.24(4)** A settlement agreement is a permanent public record open for inspection under Iowa Code chapter 22.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.25(17A,272C) Hearing procedures in contested cases.**

**20.25(1)** The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or evidence and shall rule on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions.

**20.25(2)** When, in the opinion of the board, it is desirable to obtain specialists within an area of practice when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

**20.25(3)** An applicant or respondent has the right to participate or to be represented in all hearings related to the applicant's or respondent's case. Any applicant or respondent may be represented by an attorney at the party's own expense.

**20.25(4)** All objections shall be timely made and stated on the record.

**20.25(5)** Subject to terms prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, submit briefs, and engage in oral argument.

**20.25(6)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**20.25(7)** All rulings by an administrative law judge who acts either as presiding officer or as an aid to the board are subject to appeal to the board. While a party may seek immediate board review of rulings made by an administrative law judge when the administrative law judge is sitting with and acting as an aid to the board or panel of specialists during a hearing, such immediate review is not required to preserve error for judicial review.

**20.25(8)** Conduct of hearing. The presiding officer shall conduct the hearing in the following manner:

*a.* The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

*b.* The parties shall be given an opportunity to present opening statements;

*c.* Parties shall present their cases in the sequence determined by the presiding officer;

*d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The board members and administrative law judge have the right to question a witness. The presiding officer may limit questioning in a manner consistent with law;

*e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**20.25(9)** The hearing shall be open to the public unless the respondent requests that the hearing be closed, in accordance with Iowa Code section 272C.6(1). At the request of either party, or on the board's own motion, the presiding officer may issue a protective order to protect documents which are privileged or confidential by law.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

#### **655—20.26(17A,272C) Evidence.**

##### **20.26(1) General.**

*a.* Relevant evidence is admissible, subject to the discretion of the presiding officer. Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

*b.* The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

*c.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

*d.* Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

*e.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

*f.* Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**20.26(2) Exhibits.**

*a.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. If admitted, copies of documents should be distributed to individual board members and the administrative law judge. Unless prior arrangements have been made, the party seeking admission of a document should arrive at the hearing prepared with sufficient copies of the document to distribute to opposing parties, board members, the administrative law judge, and witnesses who are expected to examine the document. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

*b.* All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

*c.* An original is not required to prove the content of a writing, recording, or photograph. Duplicates or photocopies are admissible. Any objection related to the authenticity of an exhibit shall go to the weight given to that exhibit and not preclude its admissibility.

**20.26(3) Witnesses.**

*a.* Witnesses may be sequestered during the hearing.

*b.* Subject to the terms prescribed by the presiding officer and the limitations in Iowa Rule of Civil Procedure 1.704, parties may present the testimony of witnesses in person, by telephone, by videoconference, by affidavit, or by written or video deposition. If a witness is providing testimony in person, by telephone, or by videoconference, use of any deposition is limited by Iowa Rule of Civil Procedure 1.704.

*c.* Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions to the client to prevent a misstatement from being entered into the record.

*d.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.27(17A,272C) Default.**

**20.27(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**20.27(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**20.27(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 655—20.30(17A,272C). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit from a person with personal knowledge of each such fact. The affidavit(s) must be attached to the motion.

**20.27(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**20.27(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have

10 days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**20.27(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.971.

**20.27(7)** A decision by an administrative law judge granting or denying a motion to vacate is subject to appeal to the board within 20 days.

**20.27(8)** If a motion to vacate is granted and no timely appeal to the board has been filed, the presiding officer shall issue a rescheduling order setting a new hearing date and the contested case shall proceed accordingly.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.28(17A,272C) Ex parte communication.**

**20.28(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**20.28(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**20.28(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**20.28(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 655—20.17(17A,272C) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call which includes all parties or their representatives.

**20.28(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**20.28(6)** The executive director or designee may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive director or designee is not disqualified from participating in the making of a proposed or final decision under subrule 20.11(1) or other law and the executive director or designee complies with subrule 20.28(1).

**20.28(7)** Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible.

**20.28(8)** A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such

documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within 10 days after notice of the communication.

**20.28(9)** Promptly after being assigned to serve as presiding officer, the presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**20.28(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the board's executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.29(17A,272C) Recording.** Contested case hearings shall be recorded by electronic means or by a certified shorthand reporter. A party may request that a hearing be recorded by a certified shorthand reporter instead of through electronic means by filing a request with the board at least 14 days in advance of the hearing. Parties who request that a hearing be recorded by a certified shorthand reporter rather than by electronic means shall bear the cost of the certified shorthand reporter. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. If the request for the hearing record is made as a result of a petition for judicial review, the party who filed the petition shall be considered the requesting party.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.30(17A,272C) Proposed decisions.** Decisions issued by an administrative law judge in nondisciplinary cases are proposed decisions. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed or reviewed in accordance with this rule.

**20.30(1) Appeal by party.** Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

**20.30(2) Review.** The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**20.30(3) Exhaustion.** A party must timely seek intra-agency appeal of a proposed decision in order to adequately exhaust administrative remedies.

**20.30(4) Notice of appeal.** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or an attorney for that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

**20.30(5) Requests to present additional evidence.** A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**20.30(6) Scheduling.** The board shall issue a schedule for consideration of the appeal.

**20.30(7) Briefs and arguments.** Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

**20.30(8) Record.** The record on appeal or review shall be the entire record made before the administrative law judge.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.31(17A,272C) Final decisions.**

**20.31(1)** A final decision of the board shall include findings of fact and conclusions of law. When the board presides over the reception of the evidence at the hearing, its decision is a final decision.

**20.31(2)** The board may charge a fee to the licensee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board.

**20.31(3)** Final decisions shall be served on the respondent or applicant using one of the following methods:

- a. Personal service, as provided in the Iowa Rules of Civil Procedure, or
- b. Certified mail, return receipt requested, or
- c. Signed acknowledgment accepting service, or
- d. When service cannot be accomplished using the above methods:
  - (1) An affidavit shall be prepared outlining the measures taken to attempt service; and
  - (2) The final decision shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the respondent.
- e. If the respondent or applicant is represented by an attorney, the final decision shall be mailed to the attorney. The attorney may waive the requirement to serve the respondent or applicant through a written acknowledgment that the attorney is accepting service on behalf of the client. The state shall be served by first-class mail or state interoffice mail.

**20.31(4)** A final decision is a permanent public record open for inspection under Iowa Code chapter 22, in accordance with Iowa Code section 272C.6(4).

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.32(17A,272C) Applications for rehearing.**

**20.32(1) Who may file.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**20.32(2) Content of application.** An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence. A party may request the taking of additional evidence after the issuance of a final order only by establishing that:

- a. The evidence is material; and
- b. The evidence arose after the completion of the original hearing; or
- c. Good cause exists for failure to present the evidence at the original hearing; and
- d. The party has not waived the right to present additional evidence.

**20.32(3) Time of filing.** The application shall be filed with the board office within 20 days after issuance of the final decision.

**20.32(4) Notice to other parties.** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

**20.32(5) Disposition.** Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**20.32(6) *Only remedy.*** Application for rehearing is the only procedure by which a party may request that the board reconsider a final board decision.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.33(17A,272C) Stays of agency actions.**

**20.33(1) *When available.*** Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy. The petition must be filed within 30 days of the issuance of the final order, or if a party filed a request for rehearing that was denied, the petition must be filed within 30 days after the request for rehearing was denied or deemed denied.

**20.33(2) *When granted.*** The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay. In determining whether to grant a stay, the presiding officer shall consider the following factors:

- a. The extent to which the applicant is likely to prevail when the board or court finally disposes of the matter;
- b. The extent to which the applicant will suffer irreparable injury if relief is not granted;
- c. The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings;
- d. The extent to which the public interest relied on by the board is sufficient to justify the board's action in the circumstances.

**20.33(3) *Exhaustion required.*** A party must petition the board for a stay pursuant to this rule prior to requesting a stay from the district court in a judicial review proceeding.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.34(17A,272C) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.35(17A,272C) Emergency adjudicative proceedings.**

**20.35(1) *Necessary emergency action.*** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

**20.35(2) Issuance.**

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately served on persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal service, as provided in the Iowa Rules of Civil Procedure, or
- (2) Certified restricted mail, return receipt requested, or
- (3) Signed acknowledgment accepting service.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**20.35(3) Notice.** Unless the written emergency adjudicative order is served personally on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone and electronic mail the persons who are required to comply with the order.

**20.35(4) Proceedings.** Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for hearing. After issuance of an emergency adjudicative order, the licensee subject to the emergency adjudicative order may request a continuance of the hearing at any time by filing a request with the board. The state may only file a request for a continuance in compelling circumstances. Nothing in this subrule shall be construed to eliminate the opportunity to resolve the matter with a settlement agreement.

**20.35(5) Public record.** An emergency adjudicative order is a permanent public record open for inspection under Iowa Code chapter 22.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.36(17A,147,272C) Application for reinstatement.** Any person whose license to practice nursing has been revoked or has been voluntarily surrendered may apply for reinstatement. An application for reinstatement must be made in accordance with the terms specified in the board's order of revocation or order accepting the voluntary surrender. Any person whose license to practice nursing has been suspended and the board order imposing the suspension indicates that the respondent must apply for and receive reinstatement may apply for reinstatement in accordance with the terms specified in the board's order. All applications for reinstatement must be filed in accordance with this rule.

**20.36(1)** If the order for revocation, suspension, or surrender did not establish terms for reinstatement, an initial application for reinstatement may not be filed until at least one year has elapsed from the date of issuance of the order. Persons who have failed to satisfy the terms imposed by the board order revoking, suspending, or surrendering a license shall not be entitled to apply for reinstatement.

**20.36(2)** Reinstatement proceedings shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent's license. Such application shall be docketed in the original contested case in which the license was revoked, suspended, or surrendered. The person filing the application for reinstatement shall immediately serve a copy upon the office of the attorney general and shall serve any additional documents filed in connection with the application.

**20.36(3)** The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the respondent's assertion that the basis for the revocation, suspension, or surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the respondent.



**20.36(4)** The executive director or designee shall review the application for reinstatement and determine if it conforms to the terms established in the board order that revoked, suspended, or surrendered the license and the requirements imposed by this rule. Applications failing to comply with the specified terms or with the requirements in this rule will be denied. Such denial shall be in writing, stating the grounds, and may be appealed by requesting a hearing before the board.

**20.36(5)** Applications not denied for failure to conform to the terms established in the board order that revoked, suspended, or surrendered the license or requirements imposed by this rule may be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms may be imposed. Nothing shall prohibit the board from entering into a stipulated order granting reinstatement with or without terms in the absence of a hearing.

**20.36(6)** A nurse whose license is reinstated must complete the requirements for license reactivation in order to receive an active license.

**20.36(7)** An order granting or denying reinstatement is a permanent public record open for inspection under Iowa Code chapter 22.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.37(17A,22,272C) Dissemination of public records.** All documents identified in this chapter as permanent public records open for inspection under Iowa Code chapter 22 are reported to NURSYS® and national databanks in accordance with applicable reporting requirements. In addition, these documents may be posted on the board's Web site, published in the board's newsletter, distributed to national or state associations, transmitted to mailing lists or news media, issued in conjunction with a press release, or otherwise disseminated.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

**655—20.38(17A) Judicial review.** Judicial review of a final order of the board may be sought in accordance with the terms of Iowa Code chapter 17A.

[ARC 2339C, IAB 1/6/16, effective 2/10/16]

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E and 272C.

[Filed ARC 2339C (Notice ARC 2109C, IAB 8/19/15), IAB 1/6/16, effective 2/10/16]