

CHAPTER 17  
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

**193A—17.1(542) Civil penalties against nonlicensees.** The board may order compliance with Iowa Code chapter 542 and board rules, revoke a practice privilege, and impose civil penalties by order against a firm, other entity, or individual that is not licensed by the board pursuant to Iowa Code chapter 542, based on the unlawful practices specified in Iowa Code sections 542.13 and 542.20. In addition to the procedures set forth in Iowa Code section 542.14, this chapter shall apply.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

**193A—17.2(17A,542) Investigations.** The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code section 542.11 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations shall conform to the procedures outlined in 193A—Chapter 15. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

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**193A—17.3(17A,542) Notice of intent to impose civil penalties.** The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 542 and board rules and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty, the nature of the intended order to require compliance with Iowa Code chapter 542 and board rules, and whether a practice privilege will be revoked.
5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.
6. The address to which written request for hearing must be made.

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**193A—17.4(17A,542) Request for hearing.**

**17.4(1)** Nonlicensees must request a hearing within 30 days of the date the notice is mailed if served through restricted certified mail to the last-known address, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

**17.4(2)** If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

**17.4(3)** If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

**17.4(4)** A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules at any stage of the proceeding upon mutual consent of the board.

**17.4(5)** The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 193A—16.4(272C,542). Hearings shall be open to the public.  
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**193A—17.5(542) Factors to consider.** In addition to the factors set forth in Iowa Code section 542.14(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

1. The time lapsed since the unlawful practice occurred.
2. Evidence of reform or remedial actions.
3. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
4. Whether the violation involved an element of deception.
5. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
6. The clarity of the issue involved.
7. Whether the violation was willful and intentional.
8. Whether the nonlicensee acted in bad faith.
9. The extent to which the nonlicensee cooperated with the board.

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**193A—17.6(542) “Safe harbor” language.** Persons who do not hold a CPA certificate or LPA license, firms which do not hold a CPA or LPA firm permit to practice, or individuals or firms which are ineligible to exercise a practice privilege shall not use in any statement relating to the financial affairs of a person or entity language which is conventionally used by CPAs or LPAs in reports on financial statements. Pursuant to Iowa Code section 542.13(8), such persons or firms may use the following “safe harbor” language:

“I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

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**193A—17.7(542) Enforcement options.** In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent order as provided in Iowa Code sections 542.14 and 542.15.

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These rules are intended to implement Iowa Code chapters 17A and 542.

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