

CHAPTER 65
DISCIPLINE FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES,
INSTRUCTORS, SALONS, AND SCHOOLS

[Prior to 7/29/87, Health Department[470] Ch 151]

[Prior to IAC 12/23/92, see 645—Chapter 62]

645—65.1(157,272C) Definitions.

“*Board*” means the board of cosmetology arts and sciences.

“*Discipline*” means any sanction the board may impose upon cosmetology arts and sciences licensees, instructors, salons, and schools.

“*Licensure*” means the granting of a license to any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

645—65.2(157,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—65.3(157,272C) when the board determines that any of the following acts or offenses have occurred:

65.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, the following:

a. An intentional perversion of the truth in making application for a license to practice in this state;

b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

65.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice;

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other licensees in the state of Iowa acting in the same or similar circumstances;

c. A failure to exercise the degree of care which is ordinarily exercised by the average licensee acting in the same or similar circumstances;

d. Failure to conform to the minimal standard of acceptable and prevailing practice in this state.

65.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

65.2(4) The use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, acts which constitute making false, deceptive, misleading or fraudulent representations in the practice of the profession.

65.2(5) Practice outside the scope of the profession.

65.2(6) Habitual intoxication or addiction to the use of drugs.

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

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

65.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

65.2(8) Falsification of client records.

65.2(9) Acceptance of any fee by fraud or misrepresentation.

65.2(10) Misappropriation of funds.

65.2(11) Negligence in the practice of the profession. Negligence in the practice of the profession includes a failure to exercise due care, including improper delegation of duties or supervision of

employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair a practitioner's ability to safely and skillfully practice the profession.

65.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

65.2(13) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

65.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

65.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of the profession in another state, district, territory or country.

65.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

65.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

65.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

65.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

65.2(20) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

65.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

65.2(22) Failure to pay costs assessed in any disciplinary action.

65.2(23) Knowingly aiding, assisting, or advising a person to unlawfully practice the profession.

65.2(24) Failure to report a change of name or address within 30 days after the occurrence.

65.2(25) Failure to return the salon license to the board within 30 days of discontinuance of business under that license.

65.2(26) Representing oneself as a licensed individual or entity when one's license has been suspended or revoked, or when one's license is on inactive status.

65.2(27) Permitting another person to use one's license for any purpose.

65.2(28) Permitting an unlicensed employee or person under the licensee's or the licensed school's or salon's control to perform activities that require a license.

65.2(29) Permitting a licensed person under the licensee's or the licensed school's or salon's control to practice outside the scope of the person's license.

65.2(30) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

65.2(31) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

65.2(32) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

- a. Verbally or physically abusing a client or coworker.
- b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.
- e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

65.2(33) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157, with or without compensation, in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in Iowa Code section 158.1. **EXCEPTION:** A licensee may practice at a location that is not a licensed salon or school of cosmetology arts and sciences when extenuating circumstances related to the physical or mental disability or death of a customer prevent the customer from seeking services at the licensed salon or school.

65.2(34) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

65.2(35) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

65.2(36) A person is determined by the investigator to be providing cosmetology services and leaving a salon at the time of inspection, which shall be prima facie evidence that an unlicensed person is providing services for which a license is required.

645—65.3(157,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—65.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—65.5(157) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 157.13(1). In addition to the procedures set forth in Iowa Code chapter 157, this chapter shall apply.

65.5(1) Unlawful practices. Practices by an unlicensed person or establishment which are subject to civil penalties include, but are not limited to:

- a.* Acts or practices by unlicensed persons which require licensure to practice cosmetology arts and sciences under Iowa Code chapter 157.

- b.* Acts or practices by unlicensed establishments which require licensure as a salon or school of cosmetology arts and sciences under Iowa Code chapter 157.
- c.* Use or attempted use of a licensee's certificate or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- d.* Falsely impersonating a person licensed under Iowa Code chapter 157.
- e.* Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- f.* Other violations of Iowa Code chapter 157.
- g.* Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

65.5(2) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code chapter 157 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

65.5(3) Subpoenas. Pursuant to Iowa Code section 17A.13(1) and Iowa Code chapter 157, the board is authorized in connection with an investigation of an unlicensed person or establishment to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in 645—9.5(17A,272C).

65.5(4) 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 157 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

- a.* A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 157.
- e.* Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.
- f.* The address to which written request for hearing must be made.

65.5(5) Requests for hearings.

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 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.

b. If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 157, 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 a civil penalty.

c. 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.

d. A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 157 at any stage of the proceeding upon mutual consent of the board.

e. 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. Hearings shall be open to the public.

65.5(6) *Factors for board consideration.* The board may consider the following when determining the amount of civil penalty to impose, if any:

- a.* Whether the amount imposed will be a substantial economic deterrent to the violation.
- b.* The circumstances leading to or resulting in the violation.
- c.* The severity of the violation and the risk of harm to the public.
- d.* The economic benefits gained by the violator as a result of noncompliance.
- e.* The welfare or best interest of the public.

65.5(7) *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 agreement as provided in Iowa Code chapter 157.

65.5(8) *Judicial review.*

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 147.83.

645—65.6(157) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

65.6(1) *Content of order.* A board order for a mental, physical, or clinical competency examination shall include the following items:

- a.* A description of the type of examination to which the licensee must submit.
- b.* The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c.* The time period in which the licensee must schedule the required examination.
- d.* The amount of time which the licensee has to complete the examination.
- e.* A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f.* A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g.* A requirement that the licensee communicate with the board regarding the status of the examination.
- h.* A concise statement of the facts relied on by the board to order the evaluation.

65.6(2) *Alternatives.* Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

65.6(3) *Objection to order.* A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in

a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

65.6(4) *Closed hearing.* Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(1).

65.6(5) *Order and reports confidential.* An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

65.6(6) *Admissibility.* In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

65.6(7) *Failure to submit.* Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 147, 157 and 272C.

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