

CHAPTER 36
DISCIPLINE

657—36.1(147,155A,272C) Authority and grounds for discipline.

36.1(1) *Jurisdiction of the board.* The board has the authority to impose discipline for any violations of Iowa Code chapters 124, 124A, 124B, 126, 147, 155A, 205, and 272C or the rules promulgated thereunder.

36.1(2) *Disciplinary sanctions.* The board has the authority to impose the following disciplinary sanctions:

- a. Revocation of a registration, a permit, or a license issued by the board.
- b. Suspension of a registration, a permit, or a license issued by the board until further order of the board or for a specified period.
- c. Nonrenewal of a registration, a permit, or a license issued by the board.
- d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.
- e. Probation.
- f. Require a pharmacist or a pharmacist-intern to complete additional education or training.
- g. Require a pharmacist to successfully complete any reexamination for licensure.
- h. Order a pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person to undergo a physical or mental examination.
- i. Impose civil penalties not to exceed \$25,000.
- j. Issue citation and warning.
- k. Such other sanctions allowed by law as may be appropriate.

36.1(3) *Considerations in determining sanctions.* The board may consider the following factors in determining the nature and severity of the disciplinary sanction to be imposed:

- a. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
- b. The facts of the particular violation.
- c. Any extenuating circumstances or other countervailing considerations.
- d. Number of prior violations or complaints.
- e. Seriousness of prior violations or complaints.
- f. Whether remedial action has been taken.
- g. Any other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee, registrant, or permittee.

36.1(4) *Grounds for discipline.* The board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy, to operate a pharmacy doing business in this state, or to operate as a wholesale drug distributor doing business in this state, or in making application for a registration to practice as a pharmacist-intern, a pharmacy technician, or a pharmacy support person. It includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application, or attempting to file or filing with the board any false or forged diploma, certificate, affidavit, identification, or qualification in making application for a license or registration in this state.

b. Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

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

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

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

(2) The excessive use of drugs which may impair a licensee's or registrant's ability to practice with reasonable skill or safety.

e. Conviction of a felony related to the profession or occupation of the licensee or registrant, or a conviction of a felony that would affect the licensee's or registrant's ability to practice within the licensee's or registrant's profession. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services which the pharmacist is not qualified to perform by virtue of training or experience.

g. Use of untrue or improbable statements in advertisements.

h. Distribution of drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes, but is not limited to, the disposition of drugs in violation of Iowa Code chapters 124, 126, and 155A.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147 or Iowa Code chapter 272C. Willful or repeated violations of these Acts include, but are not limited to, a pharmacist's, pharmacist-intern's, pharmacy technician's, or pharmacy support person's intentionally or repeatedly violating a lawful rule or regulation promulgated by the board of pharmacy or the state department of public health, violating a lawful order of the board in a disciplinary hearing, or violating the provisions of Title IV (Public Health) of the Code of Iowa.

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

k. Failure to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary sanction.

l. Knowingly aiding, assisting, procuring, or advising another person to unlawfully practice pharmacy or to unlawfully perform the functions of a pharmacist-intern, a pharmacy technician, or a pharmacy support person.

m. Inability of a licensee or registrant to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

n. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license or registration for the duration of the license or registration unless the board otherwise orders.

o. Submission of a false report of continuing education or failure to submit biennial reports of continuing education.

p. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice court claim or action.

q. Failure to file the reports required by subrule 36.2(3) concerning acts or omissions committed by another licensee or registrant.

- r.* Willful or repeated malpractice.
- s.* Willful or gross negligence.
- t.* Obtaining any fee by fraud or misrepresentation.
- u.* Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections 147.55, 155A.12, and 155A.15 or any of the rules of the board.
- v.* Practicing pharmacy without an active and current Iowa pharmacist license, operating a pharmacy without a current pharmacy license, operating a prescription drug wholesale facility without a current wholesale drug license, practicing as a pharmacist-intern without a current pharmacist-intern registration, assisting a pharmacist with technical functions associated with the practice of pharmacy without a current pharmacy technician registration except as provided in rule 657—3.3(155A), introductory paragraph, or assisting a pharmacist with nontechnical functions associated with the practice of pharmacy without a current pharmacy support person registration.
- w.* Attempting to circumvent the patient counseling requirements, or discouraging patients from receiving patient counseling concerning their prescription drug orders.
- x.* Noncompliance with a child support order or with a written agreement for payment of child support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J.
- y.* Student loan default or noncompliance with the terms of an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 or default on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program upon certification by the program of such a default.
- z.* Engaging in any conduct that subverts or attempts to subvert a board investigation.
- aa.* Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, employing or continuing to employ a person to assist a pharmacist with technical functions associated with the practice of pharmacy who is not currently registered as a pharmacy technician except as provided in rule 657—3.3(155A), introductory paragraph, or employing or continuing to employ a person to assist a pharmacist with nontechnical functions associated with the practice of pharmacy who is not currently registered as a pharmacy support person.
- ab.* Retaliatory action. Retaliating against a pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person for making allegations of illegal or unethical activities, making required reports to the board, or cooperating with a board investigation or survey.
- ac.* Failing to create and maintain complete and accurate records as required by state or federal law, regulation, or rule of the board.
- ad.* Violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state.
- ae.* Having a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to any of the grounds for disciplinary action in Iowa. A copy of the record from the state taking the disciplinary action shall be conclusive evidence of the action taken by that state.
- af.* Failure to comply with mandatory child or dependent adult abuse reporter training requirements.
- ag.* Failure to timely provide to the board or a representative of the board prescription fill data or other required pharmacy or controlled substances records.
- ah.* Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D.

[ARC 8673B, IAB 4/7/10, effective 6/1/10]

657—36.2(155A,272C) Investigations.

36.2(1) General. The board may, upon receipt of a written or verbal complaint or upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions that the board reasonably believes constitute cause under applicable law or administrative rules for licensee, registrant, or permittee discipline.

36.2(2) Reporting of judgments or settlements. Each licensee or registrant shall report to the board every adverse judgment in a malpractice action to which the pharmacy, pharmacist, pharmacist-intern,

pharmacy technician, or pharmacy support person is a party, and every settlement of a claim alleging malpractice. The report must be filed within 30 days from the date of the judgment or settlement.

36.2(3) *Reporting of acts or omissions.* Each licensee or registrant having firsthand knowledge of acts or omissions set forth in subrule 36.1(4) shall report to the board within 30 days of initially acquiring the information those acts or omissions committed by another person licensed to practice pharmacy or registered to practice as a pharmacist-intern, as a pharmacy technician, or as a pharmacy support person. The report shall include the name and other available information identifying the licensee or registrant and the date, time, and place of the incident.

36.2(4) *Confidentiality of investigative files.* Complaint files, investigation files, and all other investigation reports and investigative information in the possession of the board or its employees or agents that relate to licensee, permittee, or registrant discipline shall be privileged and confidential pursuant to Iowa Code section 272C.6(4).

36.2(5) *Investigation of allegations.* In order to determine if probable cause exists for a disciplinary hearing, the board, the executive director, or someone designated by the executive director shall cause an investigation to be made into the allegations of the complaint. The licensee, registrant, or permittee who is the subject of the complaint shall be given the opportunity to present to the investigator a position or defense respecting the allegations of the complaint prior to the commencement of a contested case.

36.2(6) *Investigatory subpoena powers.* The board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help determine whether a contested case proceeding (hearing) should be commenced.

36.2(7) *Investigative report.* Upon completion of the investigation, the investigator(s) shall prepare a report for the board's consideration. The report may contain the position or defense of the respondent, discuss jurisdiction, and set forth any legal arguments and authorities that appear applicable to the case.

36.2(8) *Board consideration.* The board shall review all investigations. Participation in the review shall not bar any board member from participating in any subsequent disciplinary proceeding.

a. Board action. After reviewing an investigation, the board may either institute a disciplinary proceeding by filing one or more statements of charges, send a confidential letter of education or administrative warning to the licensee, registrant or permittee, request additional investigation, or close the case without further investigation.

b. Confidential action. If the board determines that formal disciplinary action is not warranted, the board may send a confidential letter of education or administrative warning to the licensee, registrant or permittee. The purpose of a confidential letter of education or administrative warning is to alert the licensee, registrant or permittee to possible violations of Iowa law or board rules so that the licensee, registrant or permittee may address the issues. Confidential letters of education and administrative warnings do not constitute formal disciplinary action and are not public records. The board shall maintain a copy of the confidential letter of education or administrative warning in the confidential investigative file regarding the licensee, registrant or permittee. Confidential letters of education and administrative warnings may be used as evidence against a licensee, registrant or permittee in future administrative hearings.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9412B, IAB 3/9/11, effective 4/13/11]

657—36.3(147,272C) Peer review committees.

36.3(1) *Establish committee.* The board may establish and register peer review committees.

36.3(2) *Referral to committee.* The board shall determine which complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.

36.3(3) *Services to committee.* The board may provide investigatory and related services to a peer review committee upon request.

36.3(4) *Investigation by committee.* A peer review committee may determine the method to be used in making its investigation, or that it is unable to investigate the report upon a complaint and return the complaint, together with an explanation, to the board.

36.3(5) *Confidentiality.* A peer review committee shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

36.3(6) Immunity from civil liability. Members of a peer review committee shall not be liable for acts, omissions, or decisions made in connection with service on a peer review committee. However, immunity from civil liability shall not apply if the act is done with malice.

36.3(7) Committee procedures. A peer review committee shall submit to the board for approval the procedures to be used for review, investigation, and handling of all complaints.

657—36.4(17A,124,124B,126,147,155A,272C) Disciplinary proceedings. The proceeding for revocation, suspension, or other disciplinary sanctions against a pharmacy license, a wholesale drug license, a pharmacy technician registration, a pharmacy support person registration, a pharmacist-intern registration, or a license to practice pharmacy, or the denial of or refusal to issue or renew a license or registration, or the suspension, denial, or revocation of a permit to handle precursor substances shall be substantially in accordance with the procedures set forth in 657—Chapter 35 and these rules, which are in addition to the procedures stated in Iowa Code chapter 17A and Iowa Code section 155A.16.

[ARC 8673B, IAB 4/7/10, effective 6/1/10; ARC 9412B, IAB 3/9/11, effective 4/13/11]

657—36.5(17A,124,124B,126,147,155A,272C) Notice of disciplinary hearing.

36.5(1) Preparation of notice. The executive director shall prepare the notice of hearing upon direction to do so by the board upon a probable cause determination.

36.5(2) Contents. The notice of hearing shall contain the information set forth in 657—subrule 35.5(2).

36.5(3) Delivery. Delivery of the notice shall constitute the commencement of the contested case proceeding, and delivery may be executed by one of the methods provided for in 657—subrule 35.5(1).

36.5(4) Timely service – denial of renewal. Notice of a hearing involving denial of license, permit, or registration renewal shall be served no later than 30 days before the expiration of the license, permit, or registration.

36.5(5) Timely service – revocation or suspension. Notice of a hearing involving revocation or suspension of a license, permit, or registration shall be served no less than 30 days before the time set for the hearing.

[ARC 9412B, IAB 3/9/11, effective 4/13/11]

657—36.6(17A,124B,147,155A,272C) Informal settlement.

36.6(1) Negotiating parties.

a. A contested case may be resolved by informal settlement. The respondent or the board may initiate negotiation of an informal settlement.

b. The board chairperson may designate the executive director or one or more board members with authority to negotiate on behalf of the board.

36.6(2) Waiver of notice and opportunity to be heard. The decision to enter into informal settlement negotiations is voluntary on the part of the respondent. By entering into informal settlement negotiations, the respondent waives the right to seek disqualification of a board member pursuant to Iowa Code section 17A.17 and 657—35.9(17A) based on that board member's participation in the settlement negotiations. Upon initiation of negotiation, the assistant attorney general is authorized to discuss informal settlement with the board's designee. Consent to negotiation by the respondent also constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation.

36.6(3) Board approval. All informal settlements are subject to approval of a majority of the full board. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

36.6(4) Participation of designee. A board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The designated board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

[ARC 9412B, IAB 3/9/11, effective 4/13/11]

657—36.7(272C) Appearance. The respondent shall have the right to appear before the board in person or by attorney at the respondent's expense.

657—36.8(17A,124B,147,155A,272C) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, the presiding hearing officer, the primary parties and their representatives, and the fact that all testimony is being recorded.

Hearings before the board generally follow the order established by this rule.

1. The presiding officer may read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

2. The assistant attorney general representing the public interest before the board may make an opening statement.

3. Each respondent shall be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.

4. Evidence is presented on behalf of the public.

5. Evidence is presented on behalf of the respondent(s).

6. Rebuttal evidence is presented on behalf of the public.

7. Rebuttal evidence is presented on behalf of the respondent(s).

8. The parties are offered the opportunity to make closing arguments, first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

657—36.9(272C) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

657—36.10(17A,272C) Notification of decision. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final decision or order by one of the methods provided for in 657—subrule 35.5(1), or by telephone if necessary to ensure that the parties learn of the decision or order first.

[ARC 9412B, IAB 3/9/11, effective 4/13/11]

657—36.11(272C) Board decision. The board's decision and order to discipline a licensee, registrant, or permittee, or to revoke or suspend a license to practice pharmacy, a wholesale drug license, a license to operate a pharmacy, a registration to practice as a pharmacist-intern, a pharmacy technician, or a pharmacy support person, or a permit to handle precursor substances, shall remain in force and effect until the appeal is finally determined and disposed of upon its merit unless the board grants a stay of its decision as provided for in rule 657—35.28(17A).

[ARC 8673B, IAB 4/7/10, effective 6/1/10]

657—36.12(17A,272C) Publication of decisions. Final decisions of the board relating to disciplinary proceedings are public records subject to Iowa Code chapter 22, examination of public records, and may be transmitted to the appropriate professional association and a newspaper of general circulation to be selected by the board.

657—36.13(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacist-intern registration, pharmacy technician registration, or pharmacy support person registration has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

36.13(1) Prerequisites. The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement

may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

36.13(2) *Pharmacist license revoked or surrendered—examinations required.* A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

36.13(3) *Proceedings.* The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license, registration, or permit. The application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or surrendered. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 657—36.14(17A,124B,147,155A,272C).

36.13(4) *Burden of proof.* An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

36.13(5) *Order.* An order for reinstatement shall be based upon a decision that incorporates findings of facts and conclusions of law and shall be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657—Chapter 14.

[ARC 8673B, IAB 4/7/10, effective 6/1/10]

657—36.14(17A,124B,147,155A,272C) Informal reinstatement conference.

36.14(1) *Request.* Upon written request of the respondent and approval by the executive director of the board, an informal reinstatement conference may be held before the board.

36.14(2) *Confidentiality.* The conference shall be open to the public except as provided in Iowa Code chapter 21 and Iowa Code section 272C.6. Material submitted to the board regarding a licensee, registrant, or permittee subject to suspension or revocation and received prior to the filing of an application for reinstatement shall be deemed to be investigatory in nature and therefore confidential. If a request for an informal settlement conference is made and approved, all material submitted by the respondent to the board for its consideration shall be deemed public records and is not confidential. Upon filing a request for an informal reinstatement conference, the respondent consents to the provision of relevant materials to board members prior to the time of the informal reinstatement conference.

36.14(3) *Disposition.* After conducting an informal reinstatement conference, the board may issue a proposed order for reinstatement, may issue a proposed order denying reinstatement, or may order a formal hearing on the application.

36.14(4) *Appeal—formal hearing.* Upon appeal of a proposed order or upon the board's order for formal hearing, application for reinstatement shall be set for formal hearing subject to the same rules of procedure as other cases before the board. By consenting to the informal settlement conference, respondent waives any objection to any board member participating in a formal hearing by virtue of the board member's participation at the informal settlement conference. All materials submitted and statements made by the respondent at the informal settlement conference shall be admissible at a subsequent formal hearing.

36.14(5) *Final order.* A proposed order resulting from an informal reinstatement conference becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 657—35.26(17A,124B,126,147,155A,205,272C).

[ARC 9412B, IAB 3/9/11, effective 4/13/11]

657—36.15(17A,124B,147,155A,272C) Voluntary surrender of a license, permit, or registration. The voluntary surrender of a license to practice pharmacy, a license to operate a pharmacy, a wholesale drug license, a permit to handle precursor substances, a pharmacy technician

registration, a pharmacy support person registration, or a pharmacist-intern registration shall be considered a revocation of license, permit, or registration. A request for reinstatement shall be handled under the terms established by rule 657—36.13(17A,124B,147,155A,272C).

[ARC 8673B, IAB 4/7/10, effective 6/1/10]

657—36.16(17A,124B,147,155A,272C) License, permit, or registration denial. Any request for a hearing before the board concerning the denial of a license, permit, or registration shall be submitted by the applicant in writing to the board by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license, permit, or registration.

657—36.17(155A,272C) Order for mental or physical examination. A pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person who is licensed or registered by the board is, as a condition of licensure or registration, under a duty to submit to a mental or physical examination within a time period specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the expense of the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person.

36.17(1) Content of order. A board order for mental or physical examination shall include the following items:

a. A description of the type of examination to which the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person must submit.

b. The name and address of the examiner or treatment facility that the board has identified to perform the examination on the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person.

c. The time period in which the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person must schedule the required examination.

d. The amount of time in which the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person is required to complete the examination.

e. A requirement that the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person cause a report of the examination results to be provided to the board within a specified period of time.

f. A requirement that the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person communicate with the board regarding the status of the examination.

g. A provision allowing the pharmacist, pharmacist-intern, pharmacy technician, or pharmacy support person to request additional time to schedule or complete the examination or to request that the board approve an alternative examiner or treatment facility. The board shall, in its sole discretion, determine whether to grant such a request.

36.17(2) Objection to order. A licensee or registrant who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing shall specifically identify the factual and legal issues upon which the licensee or registrant bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 657—Chapter 35. A contested case involving an objection to an examination order will be captioned in the name of Jane or John Doe in order to maintain the licensee's or registrant's confidentiality.

36.17(3) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

36.17(4) 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).

[ARC 8673B, IAB 4/7/10, effective 6/1/10]

657—36.18(272C) Disciplinary hearings—fees and costs.

36.18(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee or registrant:

“*Deposition*” means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Medical examination fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee or registrant when the examination or evaluation is conducted pursuant to an order of the board.

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

36.18(2) *Hearing fee and recoverable costs.* The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing that results in disciplinary action taken by the board against the license or registration. In addition to the fee, the board may recover from the licensee or registrant costs for the following procedures and personnel:

- a. Transcript.
- b. Witness fees and expenses.
- c. Depositions.
- d. Medical examination fees incurred relating to a person licensed or registered under Iowa Code chapter 147 or 169.

36.18(3) *Fees, costs are part of disciplinary order.* Fees and costs assessed by the board pursuant to subrule 36.18(2) shall be calculated by the board’s executive director and shall be entered as part of the board’s final disciplinary order. The board’s final disciplinary order shall specify the time period in which the licensee or registrant shall pay the assessed fees and costs.

36.18(4) *Board treatment of collected fees, costs.* Fees and costs collected by the board pursuant to subrule 36.18(2) shall be allocated to the expenditure category of the board in which the hearing costs were incurred. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

36.18(5) *Failure to pay assessed fees, costs.* Failure of a licensee or registrant to pay the fees and costs assessed herein within the time period specified in the board’s final disciplinary order shall constitute a violation of a lawful order of the board.

[ARC 9412B, IAB 3/9/11, effective 4/13/11]

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10.

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¹ April 30, 2008, effective date of 36.1(4) “i,” “v,” and “aa” delayed 70 days by the Administrative Rules Review Committee at its meeting held April 4, 2008.