

CHAPTER 580
DENTAL BOARD COMPLAINTS AND INVESTIGATIONS

Chapter rescission date pursuant to Iowa Code section 17A.7: 4/9/30

481—580.1(147,153,272C) Complaint review. Pursuant to Iowa Code sections 147.87, 153.33, 272C.3 and 272C.4, the board shall, upon receipt of a complaint or upon its own motion, review and investigate alleged acts or omissions that the board reasonably believes constitute cause under applicable law or administrative rule for licensee or registrant discipline. Pursuant to Iowa Code section 153.33A, all complaints regarding the practice of dental hygiene will be initially directed to the dental hygiene committee.

[ARC 8994C, IAB 3/5/25, effective 4/9/25]

481—580.2(153) Form, content and submission of complaints.

580.2(1) Complaints should be filed with department staff associated with the board. Complaints may be filed via the board's online database or via complaint form by email, by fax, by mail, or in person. Contact information for the board is available on the department's website.

580.2(2) A written complaint should include the following facts:

- a. The full name and contact information of the complainant.
- b. The full name, address, or contact information of the licensee or registrant against whom the complaint is filed.
- c. A statement of the facts concerning the alleged acts or omissions.

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481—580.3(153) Investigation. Pursuant to Iowa Code sections 147.87, 147.88, 153.33, 272C.3 and 272C.4, the board may authorize department staff to investigate the allegations of a complaint to determine whether probable cause exists.

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481—580.4(17A,153,272C) Investigatory subpoenas. Pursuant to Iowa Code sections 17A.13(1), 153.33(3) "d" and 272C.6(3), the board has the authority to issue an investigatory subpoena to compel the production of evidence deemed necessary in connection with the investigation of a complaint. A subpoena issued by the board in connection with such investigation may compel the production of evidence whether or not it is privileged or confidential under law. The board may not compel the types of evidence stipulated in Iowa Code section 272C.6(3) "a"(2).

580.4(1) The executive director or designee may, upon the written request of a board investigator or on the director's own initiative, issue a subpoena in accordance with Iowa Code sections 17A.13(1), 153.33(3) "d" and 272C.6(3). In the case of a subpoena, when seeking access to mental health records, all of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a 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 release of the records at issue.

580.4(2) A written request for a subpoena or the director's written memorandum in support of the issuance of a subpoena shall contain all of the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should initiate a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 580.4(1) have been satisfied.

580.4(3) Each subpoena shall contain all of the following:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and contact information of the executive director or designee who issued the subpoena;
- f. The date of issuance; and
- g. A return of service attached to the subpoena.

580.4(4) Any person who is aggrieved or adversely affected by compliance with 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.

580.4(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may conduct a hearing on the matter and issue a decision, or refer such hearing and decision to an administrative law judge to conduct a hearing and issue a decision.

- a. Oral argument may be scheduled at the discretion of the board or the administrative law judge.
- b. Following the conclusion of such hearing, the board or administrative law judge shall issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

580.4(6) 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 a notice of appeal within ten days of the date of service of the decision of the administrative law judge on the executive director, either in person or by certified mail.

580.4(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action or there is a final decision in the contested case.

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481—580.5(153) Board appearances. The board may request a licensee or registrant to appear before the board to discuss a pending investigation. By electing to participate in the board appearance, the licensee or registrant 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 of a personal investigation and a combination of investigative and adjudicative functions. If the executive director or designee participates in the appearance, the licensee or registrant further waives any objection to having the executive director or designee assist the board in the contested case proceeding.

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481—580.6(153) Peer review. Pursuant to Iowa Code section 272C.3(1) "i," the board may refer a complaint for peer review, investigation and report by another licensee, another registrant or a committee established by the board for such purpose.

580.6(1) The board shall determine which licensee, registrant, or peer review committee will review a case involving a dentist or dental assistant. The dental hygiene committee shall make such determinations in a case involving a dental hygienist. Peer reports and recommendations will be forwarded to the dental hygiene committee for further review and decision making.

580.6(2) The board or dental hygiene committee may request that the Iowa dental association, the Iowa dental hygienists' association and the Iowa dental assistants association assist in the composition of a peer review committee as needed.

580.6(3) Pursuant to Iowa Code sections 147.135, 272C.8 and 272C.9 and rule 481—580.11(147,272C), licensees or registrants who serve as peer reviewers shall not be liable for acts, omissions or decisions made in connection with such service.

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481—580.7(272C) Duties of peer review committees.

580.7(1) A licensee or registrant who serves as a peer reviewer shall comply with the requirements imposed by Iowa Code sections 22.7 and 272C.6 and rule 481—580.9(272C).

580.7(2) The board may provide investigative and related services to designated peer reviewers.

580.7(3) Designated peer reviewers shall thoroughly investigate a complaint as assigned and provide a written report to the board in accordance with the board's direction. The peer review shall comply with all of the following:

a. Include a peer review report that contains a statement of facts and a recommendation as to whether a violation of the standard of care occurred, with consideration given to relevant statutes, board rules, ethical standards and standards of care in making its recommendations.

b. Include in the report the signature of each peer reviewer that participated in the investigation. In the case of dissension by a peer reviewer, the dissension should be noted in the report.

c. Submit the peer review report and all investigative information to the board upon completion.

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481—580.8(272C) Board review. The board shall review all investigative reports and proceed pursuant to 481—Chapter 506.

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481—580.9(272C) Confidentiality of investigative files.

580.9(1) Complaint and investigation files, all other investigation reports and all other information in the possession of the board or peer reviewers acting under the authority of the board, its employees or its agents that relate to licensee or registrant discipline shall be subject to all of the following:

a. Are privileged and confidential;

b. Are not subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee or registrant and the board, its employees and its agents that are involved in licensee or registrant discipline; and

c. Are not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee or registrant discipline.

580.9(2) A final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

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481—580.10(272C) Investigation of reports of judgments and settlements. Reports received by the board from the commissioner of insurance, insurance carriers, licensees or registrants involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of complaints.

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481—580.11(147,272C) Immunities.

580.11(1) Pursuant to Iowa Code sections 147.135, 272C.8 and 272C.6(3) "b," a person shall not be civilly liable in relation to the following:

a. Filing a report or complaint with the board;

b. Disclosing to the board, its agents or employees, whether or not pursuant to a subpoena, records, documents, testimony or other forms of information that constitute privileged matter concerning a recipient of health care services or some other person;

c. Serving in connection with proceedings of a peer review; and

d. Serving in connection with other authorized duties of the board.

580.11(2) Immunity from civil liability shall not apply if the act is done with malice.

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These rules are intended to implement Iowa Code chapter 17A and sections 153.13, 153.33, 272C.3 and 272C.4.

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