

CHAPTER 4 DISCIPLINE

[Prior to 5/23/84, IAC, "Disciplinary Proceedings" appeared as Ch 8]

[Prior to 5/23/84, "Licensure to Practice—Licensed Practical Nurse" appeared as Ch 4. See Ch 3.]

[Prior to 8/26/87, Nursing Board[590] Ch 4]

655—4.1(17A,147,152,272C) Board authority. The board of nursing may discipline a registered nurse, a licensed practical nurse or an advanced registered nurse practitioner for any grounds stated in Iowa Code chapters 147, 152,272C and 272D, or rules promulgated thereunder.
[ARC 2339C, IAB 1/6/16, effective 2/10/16]

655—4.2(17A,147,152,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

4.2(1) In accordance with Iowa Code section 272C.3(1) "c," the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) The executive director, or an authorized designee, may review and investigate any complaint information received, in order to determine the probability that a violation of Iowa law or administrative rule has occurred.

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records and other real evidence which are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each 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.

4.3(2) A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain 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 institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Each subpoena shall contain 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 telephone number of the executive director or designee;
- f. The date of issuance;
- g. A return of service.

4.3(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and 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.

4.3(5) 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.

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

4.3(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 (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

655—4.4(17A,147,152,272C) Board action. The board shall review complaints and investigative materials and do one of the following:

4.4(1) Close the complaint case without action.

4.4(2) Request further inquiry, including peer review.

4.4(3) Issue a confidential letter of warning to the licensee. A letter of warning is not formal disciplinary action and is not a public document.

4.4(4) Determine the existence of sufficient probable cause and file a statement of charges or approve a combined statement of charges and settlement agreement.

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655—4.5(17A,147,152,272C) Peer review committee. Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

4.5(1) The board shall enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

4.5(2) Peer reviewers shall review the information provided by the board and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing and the rationale supporting the opinion.

4.5(3) Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

4.5(4) The board shall review the committee's findings and proceed with action available under rule 655—4.4(17A,147,152,272C).

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655—4.6(17A,147,152,272C) Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure or professional conduct.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

a. Falsification of the application, credentials, or records submitted to the board for licensure or license renewal as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.

c. Impersonating any applicant in any examination for licensure as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

- a.* Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.
- b.* Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.
- c.* Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.
- d.* Willful or repeated failure to practice nursing with reasonable skill and safety.
- e.* Willful or repeated failure to practice within the scope of current licensure or level of preparation.
- f.* Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.
- g.* Failure to meet the standards as defined in 655—Chapter 7, Iowa Administrative Code.
- h.* Failure to comply with the requirements of Iowa Code chapter 139A.

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

- a.* Oral or written misrepresentation relating to degrees, credentials, licensure status, records and applications.
- b.* Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following:

- a.* Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- b.* Allowing another person to use one's nursing license for any purpose.
- c.* Failing to comply with any rule promulgated by the board related to minimum standards of nursing.
- d.* Improper delegation of nursing services, functions, or responsibilities.
- e.* Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
- f.* Committing an act which causes physical, emotional, or financial injury to the patient or client.
- g.* Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.
- h.* Violating the confidentiality or privacy rights of the patient or client.
- i.* Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation or economic or social status.
- j.* Failing to assess, accurately document, evaluate, or report the status of a patient or client.
- k.* Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.
- l.* Fraudulently or inappropriately using or permitting the use of prescription blanks, obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.
- m.* Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs or while impaired by the use of legitimately prescribed pharmacological agents or medications.
- n.* Being involved in the unauthorized manufacture or distribution of a controlled substance.
- o.* Being involved in the unauthorized possession or use of a controlled substance.
- p.* Engaging in behavior that is contradictory to professional decorum.
- q.* Failing to report suspected wrongful acts or omissions committed by a licensee of the board.
- r.* Failing to comply with an order of the board.
- s.* For an advanced registered nurse practitioner, prescribing, dispensing, administering, or distributing drugs in an unsafe manner.

t. For an advanced registered nurse practitioner, prescribing, dispensing, administering or distributing drugs without accurately documenting it or without assessing, evaluating, or instructing the patient or client.

u. For an advanced registered nurse practitioner, prescribing, dispensing, administering or distributing drugs to individuals who are not patients or are outside the licensee's specialty area.

v. Engaging in repeated verbal or physical conduct which interferes with another health care worker's performance or creates an intimidating, hostile, or offensive work environment.

w. Failing to properly safeguard or secure medications.

x. Failing to properly document or perform medication wastage.

4.6(5) For purposes of this subrule, "patient" is defined to include the patient and the patient's family or caretakers who are present with the patient while the patient is under the care of the licensee. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following professional boundaries violations:

a. Sexual contact with a patient, regardless of patient consent.

b. Making lewd, suggestive, demeaning, or otherwise sexual comments to a patient, regardless of patient consent.

c. Initiating, or attempting to initiate, a sexual, emotional, social, or business relationship with a patient, for personal gain, regardless of patient consent.

d. Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.

e. Repeatedly divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.

f. Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

4.6(6) In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs may include, but need not be limited to, the following:

a. Excessive use of alcohol which may impair a licensee's ability to practice the profession with reasonable skill and safety.

b. Excessive use of drugs which may impair a licensee's ability to practice the profession with reasonable skill and safety.

4.6(7) In accordance with Iowa Code section 147.55(5), conviction of a crime related to the profession or occupation of the licensee or conviction of any crime that would affect the licensee's ability to practice within a profession means the following:

a. Pleading guilty to or being convicted of a crime related to the profession of nursing, or conviction of any crime that would affect the licensee's ability to practice nursing, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction wherein the action occurred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

b. Reserved.

4.6(8) In accordance with Iowa Code section 147.55(6), fraud in representation as to skill or ability.

4.6(9) In accordance with Iowa Code section 147.55(7), use of untruthful or improbable statements in advertisements.

4.6(10) In accordance with Iowa Code section 147.55(8), willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

4.6(11) In accordance with Iowa Code section 147.55(9), other acts or offenses as specified by board rule, including the following:

a. Failing to provide written notification of a change of address to the board within 30 days of the event.

b. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.

c. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.

d. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

e. Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions, within the time period provided.

f. Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions, within the time period provided.

g. Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 655—subrule 7.2(2) or exceptions, within the time period provided.

h. Failing to respond to or comply with a board investigation or subpoena.

i. Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.

j. Violating an initial agreement or contract with the Iowa nurse assistance program committee.

4.6(12) In accordance with Iowa Code section 147.2 or 147.10:

a. Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact.

b. Engaging in the practice of nursing in Iowa on an inactive license.

4.6(13) In accordance with Iowa Code section 152.10(2):

a. Continued practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare, without taking precautions to meet the current standard of care.

b. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse or advanced registered nurse practitioner revoked or suspended or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence of such fact. "Certified copy" means a complete and accurate copy of a document, as verified by the board or the agency providing that document. "Certified copy" includes an electronic version of a document provided to another agency or individual by the board, or received from another agency, so long as the electronic record is:

- (1) Obtained directly from the official Web site of the board or other agency;
- (2) Regularly updated by the board or the other agency in accordance with standard practice;
- (3) Accessible as a "read only" document;
- (4) Properly safeguarded to prevent the document from being altered; and
- (5) Certified from another agency in accordance with the laws applicable in that jurisdiction.

c. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.

d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

e. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

f. Inability to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

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655—4.7(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following:

1. Revocation.
2. Suspension.
3. Restriction on engaging in specified procedures or acts.
4. Probation.
5. Order a physical, mental or substance abuse evaluation, alcohol or drug screening, or clinical competency evaluation.
6. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2) “e.” Assessment of a fine shall be specified in the order and may not exceed a maximum amount of \$1,000. Fines may be incurred for:

- Practicing without an active license: \$50 for each calendar month or part thereof, beginning on the date that a license enters inactive status.
 - Failing to respond to the board during a board audit or to submit verification of compliance with the continuing education requirements or exceptions: \$50 for each contact hour that is not verified.
 - Violating rule 655—4.6(17A,147,152,272C): an amount deemed appropriate.
7. Additional education, reexamination, or both.
 8. Citation and warning.
 9. Such other sanctions allowed by law as may be appropriate.

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

655—4.8(17A,147,152,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation.

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

These rules are intended to implement Iowa Code chapter 17A and Iowa Code sections 147.55, 152.10, 272C.4, 272C.5, 272C.6, and 272C.9.

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