

CHAPTER 106
DISCIPLINARY PROCEDURES

191—106.1(523A) Investigations. The commissioner is authorized by Iowa Code section 17A.13(1) and Iowa Code Supplement section 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code Supplement section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

191—106.2(17A,523A) Penalties. Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

106.2(1) Criminal penalties. A person who willfully violates Iowa Code Supplement section 523A.501(1), concerning the requirement for a preneed seller license, or Iowa Code Supplement section 523A.502(1), concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant to Iowa Code chapter 523A including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa Code Supplement sections 523A.201, 523A.202, and 523A.404, and Iowa Code Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code Supplement section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 106 do not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

106.2(2) Consumer fraud Act. A violation by a licensed or unlicensed person of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, 191—Chapters 100 through 106, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

106.2(3) Administrative sanctions.

a. Pursuant to Iowa Code Supplement sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute any purchase agreement under Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that payment for the license or renewal was returned by a bank without payment to the commissioner, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

d. The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand;
- (2) Require additional education or training;
- (3) Order mediation pursuant to Iowa Code Supplement section 523A.804;

- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or Iowa Code Supplement section 523A.807 as amended by 2008 Iowa Acts, House File 2555, section 52;
- (5) Require certain specified procedures or methods of operation;
- (6) Order the payment of consumer restitution;
- (7) Place a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports;
- (8) Refuse to issue or renew a license;
- (9) Suspend a license for an indefinite or specific period of time;
- (10) Revoke a license;
- (11) Accept the voluntary surrender of a license;
- (12) Impose costs associated with the commissioner's investigation and enforcement activities;
- (13) Impose civil penalties pursuant to Iowa Code Supplement section 523A.807 as amended by 2008 Iowa Acts, House File 2555, section 52, for violation of Iowa Code Supplement section 523A.201 or 523A.202; Iowa Code Supplement section 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code Supplement section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code Supplement section 523A.404; Iowa Code Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46; Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, sections 47 and 48; or Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50;
- (14) Any other sanction allowed by law, as the commissioner deems appropriate.

e. A person with an inactive, expired, or suspended license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any rules or orders adopted thereto.

f. In addition, or as an alternative to the administrative process described in these rules, the commissioner may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent agreement, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

g. The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

- (1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the infraction, and the clarity of the issues, laws and rules involved;
- (2) Evidence that the infraction is not an isolated event and is part of a widespread practice;
- (3) Evidence that the acts or practices were willful and intentional;
- (4) The economic benefits gained by the licensee or applicant as a result of the infraction;
- (5) Evidence that the infraction occurred while the licensee was on probation or had an inactive or suspended license;
- (6) The number of prior warning letters or reprimand letters;
- (7) The number of complaints;
- (8) The number of prior violations, especially evidence of repetitive violations of a like kind;
- (9) The seriousness of prior complaints or violations;
- (10) The length of time since the unlawful practice occurred;
- (11) Whether the violation involved an element of deception;
- (12) Whether the unlawful practice violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;
- (13) Whether the person acted in bad faith;
- (14) The extent to which the licensee or applicant cooperated with the commissioner;
- (15) Evidence of reform or remedial action and whether reform or remedial action occurred prior to the commissioner's involvement with the fact situation;

- (16) The amount of restitution paid or to be paid;
- (17) The risk of harm created by the acts or practices involved in the infraction;
- (18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;
- (19) The public interest in protecting consumers and preventing the acts or practices involved in the infraction;
- (20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and
- (21) Any other extenuating facts or other countervailing considerations.

191—106.3(17A,523A) Administrative procedures.

106.3(1) Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 106.2(3), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1) “a” and “b.” The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the order would be issued;
- 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 523A, including any required restitution;
- e. Notice of the unlicensed person’s right to a hearing and the time frame in which hearing must be requested; and
- f. The address to which written request for hearing must be made.

106.3(2) Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 106.2(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. 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 delivery to the commissioner’s office.

106.3(3) If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

106.3(4) If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

106.3(5) A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, at any stage of the proceeding upon mutual consent of the commissioner.

106.3(6) 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.

106.3(7) A person aggrieved by the commissioner’s issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 17A, 22, and 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

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