

641—70.10(10A) Denial, suspension, or revocation of certification; denial, suspension, revocation, or modification of course approval; and imposition of penalties.

70.10(1) When the department finds that the applicant, certified lead professional, or certified firm has committed any of the following acts, the department may deny an application for certification, may suspend or revoke a certification, may prohibit specific work practices, may require a project conducted by persons or firms that are not certified or a project where prohibited work practices are being used to be halted, may require the cleanup of lead hazards created by the use of prohibited work practices, may impose a civil penalty, may place on probation, may require additional education, may require reexamination of the state certification examination, may issue a warning, or may impose other sanctions allowed by law as may be appropriate.

- a.* Failure or refusal to comply with any requirements of this chapter.
- b.* Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by 641—70.3(10A) through 641—70.7(10A).
- c.* Failure or refusal to permit entry or inspection as described in 70.9(1) through 70.9(3).
- d.* Obtaining or attempting to obtain certification through fraudulent representation.
- e.* Failure to obtain certification from the department and performing work requiring certification.
- f.* Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.
- g.* Conducting any part of a lead-based paint activity that requires certification without being certified or with a certification that has lapsed.
- h.* Obtained documentation of training through fraudulent means.
- i.* Gained admission to an accredited training program through misrepresentation of admission requirements.
- j.* Obtained certification through misrepresentation of certification requirements or related documents pertaining to education, training, professional registration, or experience.
- k.* Performed work requiring certification at a job site without having proof of current certification.
- l.* Permitted the duplication or use of the individual's or firm's own certificate by another.
- m.* Failed to follow the standards of conduct required by 641—70.6(10A).
- n.* Failed to comply with federal, state, or local lead-based paint statutes and regulations, including the requirements of this chapter.
- o.* Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of lead professional activities or engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- p.* Used untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by a lead professional making information or intention known to the public that is false, deceptive, misleading, or promoted through fraud or misrepresentation.
- q.* Falsified reports and records required by this chapter.
- r.* Accepted any fee by fraud or misrepresentation.
- s.* Negligence by the firm or individual in the practice of lead professional activities. This includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions that impair the ability of the firm or individual to safely and skillfully practice the profession.
- t.* Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate court will not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report will be expunged from the records of the board.
- u.* Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- v.* Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed.

- w. Failed to respond within 20 days of receipt of communication from the department that was sent by registered or certified mail.
- x. Engaged in any conduct that subverts or attempts to subvert a department investigation.
- y. Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.
- z. Failed to pay costs assessed in any disciplinary action.
- aa. Been convicted of a felony or misdemeanor related to lead professional activities or the conviction of any felony or misdemeanor that would affect the ability of the firm or individual to perform lead professional activities. A copy of the record of conviction or plea of guilty is conclusive evidence.
 - ab. Unethical conduct. This includes, but is not limited to, the following:
 - (1) Verbally or physically abusing a client or coworker.
 - (2) Improper sexual conduct with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.
 - (3) Engaging in a professional conflict of interest.
 - (4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.
 - (5) Being adjudged mentally incompetent by a court of competent jurisdiction.
 - (6) Habitual intoxication or addiction to drugs.
 1. The inability of a lead professional 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 that may impair a lead professional's ability to practice with reasonable skill or safety.
 3. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.
 - (7) Registration on a state sex offender registry.

70.10(2) The department may deny, suspend, revoke, or modify the approval for a course, or may place on probation, or impose other sanctions allowed by law as may be appropriate, or may impose a civil penalty or impose other sanctions allowed by law as may be appropriate when it finds that the training program, training manager, or other person with supervisory authority over the course has committed any of the following acts:

- a. Misrepresented the contents of a training course to the department or to the student population.
- b. Failed to submit required information or notifications in a timely manner.
- c. Failed to maintain required records.
- d. Falsified approval records, instructor qualifications, or other information or documentation related to course approval.
- e. Failed to comply with the training standards and requirements in 641—70.4(10A).
- f. Made false or misleading statements to the department in its application for approval or reapproval that the department relied upon in approving the application.
- g. Failed to comply with federal, state, or local lead-based paint statutes and regulations, including the requirements of this chapter.
- h. Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of conducting a training program or engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- i. Used untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by a training program making information or intention known to the public that is false, deceptive, misleading, or promoted through fraud or misrepresentation.
- j. Falsified reports and records required by this chapter.
- k. Accepted any fee by fraud or misrepresentation.
- l. Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate

court will not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report will be expunged from the records of the board.

m. Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.

n. Failed to respond within 20 days of receipt of communication from the department that was sent by registered or certified mail.

o. Engaged in any conduct that subverts or attempts to subvert a department investigation.

p. Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.

q. Failed to pay costs assessed in any disciplinary action.

70.10(3) Reinstatement.

a. Any individual, training program, or firm that has been revoked, denied, or suspended may apply to the department in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the certification is permanently revoked.

b. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the certification was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

70.10(4) Complaints and other requests for action under this rule. Complaints regarding a certified lead professional, a certified elevated blood lead (EBL) inspection agency, a certified firm, or an approved course may be submitted to the department. The complainant should provide:

a. The name of the certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm and the specific details of the action(s) by the certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm that did not comply with the rules; or

b. The name of the lead professional or firm that conducted lead professional activities without the appropriate certification or approval as required by the rules; or

c. The name of the sponsoring person or organization of an approved course and the specific way(s) that an approved course did not comply with the rules; or

d. The name of the sponsoring person or organization that provided a course without the approval required by these rules.

70.10(5) Civil penalties.

a. Before instituting any proceeding to impose a civil penalty under Iowa Code section 10A.902, the department will serve a written notice of violation upon the person charged. The notice of violation will specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and will identify specifically the particular provision or provisions of the law, rule, regulation, certification, approval, or cease and desist order involved in the alleged violation and will state the amount of each proposed penalty. The notice of violation will also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation will advise the person charged that upon failure to pay a civil penalty subsequently determined by the department, if any, unless compromised, remitted, or mitigated, the fee may be collected by civil action.

b. Within 20 days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation or request a contested case hearing. The answer to the notice of violation shall state any facts, explanations, and arguments denying the charges of violation, or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

c. If the person charged with violation fails to answer within the time specified in 70.10(5)“*b*,” an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in 70.10(5)“*a*.” If the person charged with violation files an answer to the notice of violation, the department, upon consideration of the answer, will issue an order dismissing the proceeding or imposing,

mitigating, or remitting the civil penalty. The person charged may, within 20 days of the date of the order or other time specified in the order, request a contested case hearing. If the person charged with violation timely requests a contested case hearing, it will be initiated and held in accordance with 481—Chapters 9 and 10.

70.10(6) Public notification.

a. The public will be notified of the suspension, revocation, modification, or reinstatement of course approval through appropriate mechanisms.

b. The department will maintain a list of courses for which the approval has been suspended, revoked, modified, or reinstated.

c. The public will be notified of the suspension or revocation of the certification of a lead professional or firm.

d. The department will maintain a list of lead professionals and firms for which certification has been suspended or revoked.

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