

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, or pharmacy technician 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 or a pharmacy technician. 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, or pharmacy technician'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 pharmacy technician or a pharmacist-intern.

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.

²*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, or 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.

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.

²*z.* Engaging in any conduct that subverts or attempts to subvert a board investigation.

²*aa.* Employing or continuing to employ as a practicing pharmacist any person whose Iowa pharmacist license is not current and active, or 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.

ab. Retaliatory action. Retaliating against a pharmacist, pharmacist-intern, or a pharmacy technician 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.

¹ April 30, 2008, effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held April 4, 2008.

² April 30, 2008, effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held April 4, 2008.