

655—4.2(17A,147,152,272C) Board action. When reviewing complaints and investigative material, the board will:

4.2(1) Close the case without further action. The board will notify the complainant and the licensee of the decision by letter. The board may reconsider and reopen a closed complaint or investigative file at a later date.

4.2(2) Close the case and issue an informal letter of warning or education. A letter of warning or education is an informal communication between the board and the licensee and is not formal disciplinary action or a public document. Letters of warning or education are not open for inspection under Iowa Code chapter 22. The board will maintain a copy of confidential letters of warning and education in the licensee's confidential investigative file. Confidential letters of warning and education may be used as evidence against a licensee in future contested case hearings before the board.

4.2(3) Request further investigation, including a peer review.

4.2(4) Determine the existence of probable cause and issue a notice of hearing and statement of charges or approve a combined statement of charges and settlement agreement.

4.2(5) The board or the licensee may request that the licensee appear before the board to discuss a pending investigation. The board has discretion on whether to grant a licensee's request for an appearance. By electing to participate in the appearance, the licensee 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 that:

- a.* Board members have personally investigated the case, and
- b.* Board members have combined investigative and adjudicative functions.

If the executive director or licensing division general counsel participates in the appearance, the licensee further waives any objection to having the executive director or licensing division general counsel assist the board in the contested case proceeding.

4.2(6) All investigative information obtained by the board or its employees or agents, including peer reviewers acting under the authority of the board, in the investigative process is privileged and confidential. Board investigative information is not subject to discovery, subpoena, or other means of legal compulsion for its release to any person other than the licensee and the board or its employees and agents and is not admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, the statement of charges, settlement agreement, or decision of the board in a contested case disciplinary proceeding is an open record.

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