

481—618.1(17A,147,152,272C) Complaints and investigations.

618.1(1) Form and content of complaint. The complaint will be submitted on the form deemed acceptable by the board and contain the following information:

a. The full name, address and telephone number of the complainant, except in instances in which the identity of the complainant is unknown.

b. The full name, address and telephone number, if known, of the licensee.

c. A clear and accurate statement of the facts of the allegation against the licensee.

618.1(2) Place and time of filing complaint. A written complaint may be delivered in person, by mail or electronically to the board office. The office address is Iowa Board of Nursing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

618.1(3) Processing complaints. Board staff will open a complaint file upon receiving a complaint or other appropriate information or upon its own motion.

a. If the board does not have legal jurisdiction over a matter or the complaint does not allege a violation of board rule, staff may close the complaint file administratively without investigation or review by the board. All other complaints will be sent to case review.

b. A complaint file will be labeled as such and is not a public record. A complaint file is part of the licensee's history and may be shared with another licensing authority upon request.

c. When an investigation is requested on a file, the complaint file is relabeled as an investigative file. An investigative file is not public record. The investigative file becomes a part of the licensee's history and may be shared with another licensing authority, upon request.

618.1(4) Case review.

a. Case review is completed by the executive director, licensing division general counsel, and chief investigator.

b. The case review team will review each complaint the board has received and take one of the following actions:

(1) Request an investigation.

(2) Contact the complainant to obtain additional information and return to case review for further consideration.

(3) Recommend closure of the complaint file.

(4) Recommend the complaint file be flagged for further discussion by the board.

(5) Close the complaint file administratively.

618.1(5) Board review.

a. The board will take the recommendations of the case review and take one of the following actions:

(1) Close the complaint file without investigation. The board will notify the complainant and the licensee of the decision by letter.

(2) Close the investigative file that has been partially or fully investigated, with or without issuing an informal letter. The board will notify the complainant and the licensee of the decision by letter.

(3) Request further investigation.

b. The board may reconsider and reopen a closed complaint or investigative file at a later date.

618.1(6) Investigation. The executive director or a board investigator may conduct an investigation into the allegations of a complaint.

a. *Investigative report.* Upon completion of an investigation, the investigator will prepare a report for the board's consideration. The report will set forth the information obtained in the course of the investigation and the response, if any, of the licensee.

b. *Investigative subpoenas.* The executive director or designee may, upon the written request of a board investigator or upon the executive director's own initiative, subpoena books, papers, records, and other real evidence necessary for a board investigation.

(1) Request for subpoena. A written request for a subpoena shall contain the following:

1. The name and address of the person to whom the subpoena will be directed;

2. A specific description of the books, papers, records or other real evidence requested;

3. An explanation of why the evidence sought to be subpoenaed is necessary for the board to determine whether it should institute a contested case proceeding; and

4. In the case of a subpoena request for mental health records, confirmation that the conditions described in subparagraph 618.2(3)“b”(3) have been satisfied.

(2) Contents of subpoena. Each subpoena shall contain the following:

1. The name and address of the person to whom the subpoena is directed;
2. A description of the books, papers, records or other real evidence requested;
3. The date, time and location for production or inspection and copying;
4. The time within which a motion to quash or modify the subpoena must be filed;
5. The signature, address and telephone number of the executive director or designee;
6. The date of issuance; and
7. A return of service attached to the subpoena.

(3) Subpoena for mental health records. A subpoena for mental health records shall meet the requirements of subparagraph 618.1(6)“b”(2). The board will document the following prior to the issuance of a subpoena for mental health records:

1. The nature of the complaint reasonably justifies the issuance of a subpoena;
2. That adequate safeguards have been established to prevent unauthorized disclosure;
3. That an express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
4. That an attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

(4) Motion to quash or modify subpoena.

1. 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.

2. Hearing on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct a hearing and issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge or the board. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

3. Appeal of decision on motion. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board’s 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. Final agency action. 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 the person is notified that the investigation has been concluded with no formal action or there is a final decision in the contested case.

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