

481—1057.1(542B) General statement. The board may impose civil penalties by order against a person who is not licensed as an engineer or land surveyor pursuant to Iowa Code chapter 542B based on the unlawful practices specified in Iowa Code section 542B.27. In addition to the procedures set forth in Iowa Code section 542B.27, this rule shall apply.

1057.1(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 542B.27 shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. A reference to the particular sections of the statutes and rules involved.
- c. A short and plain statement of the alleged unlawful practice.
- d. The dollar amount of the proposed civil penalty.
- e. Notice of the nonlicensee's right to a hearing and the time frame in which a hearing must be requested.
- f. The address to which the written request for a hearing will be made.

1057.1(2) Nonlicensees must request a hearing within 30 days of the date the notice is mailed if served through restricted certified mail to the last-known address or within 30 days of the date of service if service is accepted or made in accordance with Rule of Civil Procedure 56.1. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

1057.1(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

1057.1(4) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to a disciplinary case against a licensed engineer or land surveyor.

1057.1(5) In addition to the factors set forth in Iowa Code section 542B.27, the board may consider the following when determining the amount of civil penalty to impose, if any:

- a. The time elapsed since the unlawful practice occurred.
- b. Evidence of reform or remedial actions.
- c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
- d. Whether the violation involved an element of deception.
- e. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
- f. The clarity of the issue involved.
- g. Whether the violation was willful and intentional.
- h. Whether the nonlicensee acted in bad faith.
- i. The extent to which the nonlicensee cooperated with the board.

1057.1(6) A nonlicensee may waive the right to a hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

1057.1(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Examiners for Engineering and Surveying, and other entities. Hearings shall be open to the public.

This rule is intended to implement Iowa Code section 542B.27.

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