

481—434.5(105) Civil penalties—unlicensed penalties. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 105.27(1). In addition to the procedures set forth in Iowa Code chapters 105 and 272C, this chapter applies.

434.5(1) *Unlawful practices.* Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

- a.* Acts or practices by unlicensed persons which necessitate licensure to install or repair plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems under Iowa Code chapter 105.
- b.* Acts or practices by unlicensed persons which necessitate certification to install or repair medical gas piping systems under Iowa Code chapter 105.
- c.* Engaging in the business of designing, installing, or repairing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems without employing a licensed master.
- d.* Providing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems services on a contractual basis.
- e.* Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- f.* Falsely impersonating a person licensed under Iowa Code chapter 105.
- g.* Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- h.* Other violations of Iowa Code chapter 105.
- i.* Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

434.5(2) *Investigations.* The board is authorized by Iowa Code section 17A.13(1) and chapters 105 and 272C to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

434.5(3) *Subpoenas.* Pursuant to Iowa Code section 17A.13(1) and chapter 105, the board is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 481—503.5(17A,272C).

434.5(4) *Notice of intent to impose civil penalties.* Notice of the board's intent to order compliance with Iowa Code chapter 105 and impose a civil penalty will be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. 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.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty and the nature of the intended order.
- e.* Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.
- f.* The address to which written request for hearing must be made.

434.5(5) *Requests for hearings.*

- a.* Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, or if the nonlicensee waives in writing the right to hearing and agrees to pay the penalty, the board chairperson, the chairperson's designee, or the board executive may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as 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 a civil penalty.

c. 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 disciplinary cases against licensees.

d. Subsequent to the issuance of a notice of hearing under this subrule, the settlement agreement provisions of rule 481—506.35(17A,272C) apply.

e. The notice of intent to issue an order and the order are public records pursuant to Iowa Code chapter 22. Copies may be published. Hearings are open to the public.

434.5(6) *Factors for board consideration.* The board may consider the following when determining the amount of civil penalty to impose, if any:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to or resulting in the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The welfare or best interest of the public.

434.5(7) *Enforcement options.* In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement.

434.5(8) *Judicial review.*

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board will notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 105.27(4).

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