

**641—26.8 (135K) Denial, probation, suspension or revocation.** This rule pertains to denial, probation, suspension or revocation of registration; denial or revocation of training course approval; and denial or revocation of approval as a third-party certification agency.

**26.8(1)** The department may deny an application for registration or renewal, may place a registration on probation, may suspend or revoke a registration, or may order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

*a.* Negligence or incompetence in the testing of a backflow prevention assembly, including failure to report improper application or installation of a backflow prevention assembly to the facility owner and the administrative authority.

*b.* Knowingly submitting a false report of a test of a backflow prevention assembly to the owner of the facility, the local administrative authority, or the department.

*c.* Fraud in obtaining registration or renewal including, but not limited to:

- (1) Intentionally submitting false information on an application for registration or renewal;
- (2) Submitting a false or forged certificate or other record of training or certification.

*d.* Falsification of the assembly records required by subrule 26.6(2).

*e.* Failure to comply with these rules and with the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.

*f.* Failure to pay a required registration, renewal or late fee.

*g.* Habitual intoxication or addiction to drugs.

*h.* Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to backflow prevention assembly testing, including but not limited to crimes involving dishonesty, fraud, theft, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

*i.* Having the authorization to test backflow prevention assemblies suspended or revoked or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence.

*j.* Knowingly making misleading, deceptive, untrue, or fraudulent representations regarding the testing of backflow prevention assemblies, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not be limited to:

(1) Verbally or physically abusing a client or coworker.

(2) Improper sexual contact with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

*k.* Engaging in any conduct that subverts or attempts to subvert a department investigation.

*l.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

*m.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

*n.* Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.

*o.* Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended or revoked or when one's registration is lapsed or has been placed on inactive status.

*p.* Permitting the use of a registration by a nonregistered person for any purpose.

*q.* Acceptance of any fee by fraud or misrepresentation.

*r.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

**26.8(2)** The department may deny or revoke the approval for a training course or a continuing education course when it finds:

*a.* The lead instructor for a training course is not qualified in accordance with paragraph 26.4(1) “*f.*”

*b.* The training course did not comply with paragraph 26.4(1) “*e.*”

*c.* That the training course testing laboratory did not comply with paragraph 26.4(1) “*g.*”

*d.* The organization or person applying for approval of a training or continuing education course intentionally submitted false information to the department in support of such approval.

*e.* The organization or person conducting or sponsoring training has falsified training or continuing education records, including issuance of a certificate or other record of training to a person who did not successfully complete a training course or who did not attend continuing education training.

*f.* The organization or person responsible for a training or continuing education course has permitted physical or verbal abuse or sexual harassment of a student or instructor. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

*g.* The organization or person responsible for training courses and continuing education courses consistently fails to notify the department of such courses in a timely fashion as required by 26.4(1) “*d.*” and 26.4(2) “*a.*” or fails to pay the required fee.

*h.* Failure to comply with these rules.

**26.8(3)** The department may deny or revoke the approval for a third-party certification agency when it finds:

*a.* The application for approval contains material misinformation regarding the conduct and standards of the certification program or its acceptance in other jurisdictions.

*b.* Failure to adhere to the standards and procedures stated in the application for approval in the process of certifying or renewing the certification of testers.

*c.* Violations of paragraph 26.4(3) “*b.*”

*d.* Failure to comply with these rules.

**26.8(4)** Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

*a.* The name of the registered tester, the person or organization sponsoring an approved course, or the third-party certification agency, as applicable; and

*b.* The specific details of the action(s) by the registered tester that did not comply with the rules; or

*c.* The specific way(s) that an approved course did not comply with the rules, including the date(s) and location(s) of the alleged violation(s); or

*d.* The specific way(s) that a third-party certification agency or its representative failed to comply with the rules, including date(s) and location(s) of the alleged failure to comply.

**26.8(5)** Appeals.

*a.* Notice of denial, probation, suspension or revocation of registration; denial, probation or revocation of course approval; or denial, probation or revocation of third-party certification agency approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, probation, suspension or revocation.

*b.* An appeal of a denial, probation, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice of denial, probation, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, probation, suspension or revocation. If no appeal is submitted within 30 days, the denial, probation, suspension or revocation shall become the department's final agency action.

*c.* Upon receipt of an appeal that meets contested case status, the appeal shall be transmitted to the department of inspections and appeals within five working days of receipt pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the denial, suspension or revocation is based shall be provided to the department of inspections and appeals.

*d.* The hearing shall be conducted in accordance with 481—Chapter 10.

*e.* When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in paragraph 26.8(5) "*f.*"

*f.* Any appeal to the director of the department for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reason for appeal.

*g.* Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- (1) All pleadings, motions and rules.
- (2) All evidence received or considered and all other submissions by recording or transcript.
- (3) A statement of all matters officially noticed.
- (4) All questions and offers of proof, objections, and rulings thereon.
- (5) All proposed findings and exceptions.
- (6) The proposed findings and order of the administrative law judge.

*h.* The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested.

*i.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

*j.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

*k.* The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.