

645—65.5(157) Civil penalties against nonlicensees. 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 157.13(1). In addition to the procedures set forth in Iowa Code chapter 157, this chapter shall apply.

65.5(1) Unlawful practices. Practices by an unlicensed person or establishment which are subject to civil penalties include, but are not limited to:

- a. Acts or practices by unlicensed persons which require licensure to practice cosmetology arts and sciences under Iowa Code chapter 157.
- b. Acts or practices by unlicensed establishments which require licensure as a salon or school of cosmetology arts and sciences under Iowa Code chapter 157.
- c. Use or attempted use of a licensee's certificate or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- d. Falsely impersonating a person licensed under Iowa Code chapter 157.
- e. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- f. Other violations of Iowa Code chapter 157.
- g. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

65.5(2) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code chapter 157 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.

65.5(3) Subpoenas. Pursuant to Iowa Code section 17A.13(1) and Iowa Code chapter 157, the board is authorized in connection with an investigation of an unlicensed person or establishment 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 645—9.5(17A,272C).

65.5(4) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 157 and to impose a civil penalty shall 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 shall 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 to require compliance with Iowa Code chapter 157.
- 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.

65.5(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, the board chair or the chair's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 157, 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 shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 157 at any stage of the proceeding upon mutual consent of the board.

e. The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published. Hearings shall be open to the public.

65.5(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.

65.5(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 as provided in Iowa Code chapter 157.

65.5(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 shall 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 147.83.