

SENATE/HOUSE FILE _____
BY (PROPOSED BOARD OF MEDICINE
BILL)

A BILL FOR

1 An Act relating to disciplinary hearings conducted by
2 professional licensing boards.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 272C.6, subsections 1, 3, 4, and 6, Code
2 2021, are amended to read as follows:

3 1. Disciplinary hearings held pursuant to this chapter
4 shall be heard by the board sitting as the hearing panel, or by
5 a panel of not less than three board members who are licensed
6 in the profession, or by a panel of not less than three members
7 appointed pursuant to subsection 2, or by an administrative law
8 judge. Notwithstanding chapters 17A and 21, a disciplinary
9 hearing shall be open or closed to the public at the discretion
10 of the licensee. If the licensee does not make an election,
11 the hearing shall be open to the public.

12 3. a. The presiding officer of a hearing panel may issue
13 subpoenas pursuant to rules of the board on behalf of the board
14 ~~or on behalf of, the state, or the licensee. A licensee may~~
15 ~~have subpoenas issued on the licensee's behalf.~~

16 (1) A subpoena issued under the authority of a licensing
17 board may compel the attendance of witnesses and the production
18 of professional records, books, papers, correspondence and
19 other records, whether or not privileged or confidential under
20 law, which are deemed necessary as evidence in connection with
21 a disciplinary proceeding.

22 (2) Nothing in this subsection shall be deemed to enable
23 a licensing board to compel an attorney ~~of the licensee~~, or
24 stenographer or confidential clerk of the attorney, to disclose
25 any information when privileged against disclosure by section
26 622.10.

27 (3) In the event of a refusal to obey a subpoena, the
28 licensing board may petition the district court for its
29 enforcement. Upon proper showing, the district court shall
30 order the person to obey the subpoena, and if the person fails
31 to obey the order of the court the person may be found guilty of
32 contempt of court.

33 b. The presiding officer of a hearing panel may also
34 administer oaths and affirmations, take or order that
35 depositions be taken, and pursuant to rules of the board, grant

1 immunity to a witness from disciplinary proceedings initiated
2 either by the board or by other state agencies which might
3 otherwise result from the testimony to be given by the witness
4 to the panel.

5 4. a. In order to assure a free flow of information for
6 accomplishing the purposes of this section, and notwithstanding
7 section 622.10, all complaint files, investigation files, other
8 investigation reports, and other investigative information in
9 the possession of a licensing board or peer review committee
10 acting under the authority of a licensing board or its
11 employees or agents which relates to licensee discipline are
12 privileged and confidential, and are not subject to discovery,
13 subpoena, or other means of legal compulsion for their release
14 ~~to a person other than the licensee and the boards, their~~
15 ~~employees and agents involved in licensee discipline, and are~~
16 not admissible in evidence in a judicial or administrative
17 proceeding other than the proceeding involving licensee
18 discipline. However, investigative disciplinary charges shall
19 be public records and may contain investigative information to
20 inform the licensee and the public of the allegations. After
21 disciplinary charges have been filed, a board shall provide
22 all investigative information pertaining to complaints upon
23 which charges are based to the licensee upon request. A
24 board may adopt rules pursuant to chapter 17A authorizing the
25 release of investigative information to the licensee prior
26 to disciplinary charges being filed to facilitate informal
27 settlement of a complaint. In the absence of such rules,
28 investigatory information shall be kept confidential, even from
29 the licensee, until such time as the disciplinary charges have
30 been filed. Investigative information in the possession of a
31 licensing board or its employees or agents which relates to
32 licensee discipline may be disclosed to appropriate licensing
33 authorities within this state, ~~the appropriate licensing~~
34 ~~authority~~ authorities in another state, the coordinated
35 licensure information system provided for in the nurse

1 licensure compact contained in section 152E.1 or the advanced
2 practice registered nurse compact contained in section 152E.3,
3 the District of Columbia, or a territory or country in which
4 the licensee is licensed or has applied for a license. If the
5 investigative information in the possession of a licensing
6 board or its employees or agents indicates a crime has been
7 committed, the information ~~shall~~ may be reported to the proper
8 law enforcement agency. ~~However, a~~ A final written decision
9 and finding of fact of a licensing board in a disciplinary
10 proceeding, including a decision referred to in section 272C.3,
11 subsection 4, is a public record.

12 *b.* Pursuant to the provisions of section 17A.19, subsection
13 6, a licensing board upon an appeal by the licensee of the
14 decision by the licensing board, shall transmit the entire
15 record of the contested case to the reviewing court.

16 *c.* Notwithstanding the provisions of section 17A.19,
17 subsection 6, if a waiver of privilege has been involuntary
18 and evidence has been received at a disciplinary hearing, the
19 court shall order withheld the identity of the individual whose
20 privilege was waived.

21 6. *a.* A board created pursuant to chapter 147, 154A,
22 155, 169, 542, 542B, 543B, 543D, 544A, or 544B may charge
23 a fee not to exceed seventy-five dollars for conducting a
24 disciplinary hearing pursuant to this chapter which results in
25 disciplinary action taken against the licensee by the board, or
26 for conducting a reinstatement hearing, and in addition to the
27 fee, may recover from a licensee the costs for the following
28 ~~procedures and associated personnel:~~

29 (1) ~~Transcript~~ Court reporter fees and expenses and
30 transcript costs.

31 (2) Witness fees and expenses.

32 (3) Depositions.

33 (4) Medical examination fees incurred relating to a person
34 licensed under chapter 147, ~~154A, 155,~~ or 169.

35 (5) Investigative costs.

1 *b.* The department of agriculture and land stewardship,
2 the department of commerce, and the Iowa department of public
3 health shall each adopt rules pursuant to chapter 17A which
4 provide for the allocation of fees and costs collected pursuant
5 to this section to the board under its jurisdiction collecting
6 the fees and costs. The fees and costs shall be considered
7 repayment receipts as defined in section 8.2.

8 *c.* The fees and costs may be recovered from a licensee as
9 part of an order following a hearing or through an informal
10 settlement.

11

EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill relates to disciplinary hearings conducted by
15 professional licensing boards, as defined in Code section
16 272C.1.

17 The bill provides that disciplinary hearings may be heard by
18 an administrative law judge, in addition to various panels of
19 the board provided under current law. The bill provides that
20 if a licensee subject to a hearing does not make an election as
21 to whether the hearing shall be open or closed to the public,
22 the hearing shall be open.

23 The bill authorizes the presiding officer of a hearing panel
24 to issue subpoenas on behalf of the state. The bill strikes
25 duplicative language relating to subpoenas issued on behalf of
26 licensees.

27 Current law prohibits a board from compelling an attorney
28 of a licensee to disclose certain privileged information. The
29 bill provides that this prohibition applies to all attorneys,
30 not only an attorney of a licensee.

31 The bill provides that disciplinary charges against a
32 licensee shall be public records and may contain investigative
33 information to inform the licensee and the public of the
34 allegations. The bill requires a board to provide all
35 investigative information pertaining to complaints upon

1 which charges are based to the licensee upon request after
2 disciplinary charges have been filed. The bill authorizes a
3 board to adopt rules authorizing the release of investigative
4 information to the licensee prior to disciplinary charges being
5 filed to facilitate informal settlement of a complaint. In the
6 absence of such rules, investigatory information shall be kept
7 confidential, even from the licensee, until such time as the
8 disciplinary charges have been filed.

9 Current law requires a board to report to the proper law
10 enforcement authority if investigative information in the
11 possession of a licensing board or its employees or agents
12 indicates a crime has been committed. The bill authorizes, but
13 does not require, a board to make such a report.

14 The bill authorizes certain specified boards to charge a fee
15 not to exceed \$75 for conducting a reinstatement hearing. The
16 bill authorizes such boards to recover costs from licensees for
17 court reporter fees and expenses and investigative costs. The
18 bill provides that fees for disciplinary hearings that result
19 in disciplinary action and for reinstatement hearings, as well
20 as costs recovered from licensees, collected by such boards may
21 be recovered from a licensee as part of an order following a
22 hearing or through an informal settlement. The bill strikes
23 language authorizing the board of hearing aid specialists and
24 the board of nursing home administrators to recover the cost of
25 medical examination fees from licensees.