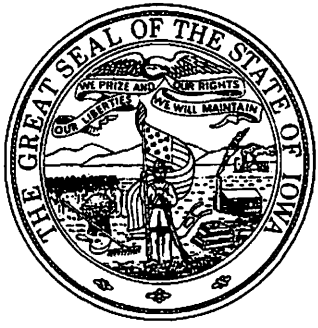
State of Iowa

Iowa Administrative Code Supplement

Biweekly
December 27, 2000



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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in the first column below correspond to the divider tabs in the IAC binders. Obsolete pages of the IAC are listed in the "Remove Old Pages" column. New and replacement pages included in this Supplement are listed in the "Insert New Pages" column. Carefully remove and insert pages as directed.

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UPDATING INSTRUCTIONS

December 27, 2000, Biweekly Supplement

[Previous Supplement dated 12/13/00]

	Remove Old Pages*	Insert New Pages
First Volume—General Information (Gray tab)	p. 15, 16	p. 15, 16
First Volume—Style and Format (Red tab)	p. 7-12	p. 7-12
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	Analysis, p. 3—Analysis, p. 6 Ch 50, p. 1—Ch 58, p. 1	Analysis, p. 3—Analysis, p. 6 Ch 50, p. 1—Ch 58, p. 1
ATTORNEY GENERAL[61]	Analysis, p. 1, 2 Ch 9, p. 1—Ch 9, p. 15	Analysis, p. 1, 2 Ch 9, p. 1—Ch 9, p. 20
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Emergency Management Division[605]	Ch 101, p. 1—Ch 103, p. 3	Ch 100, p. 1—Ch 103, p. 3
PUBLIC HEALTH DEPARTMENT[641]	Ch 90, p. 1—Ch 90, p. 3	Ch 90, p. 1—Ch 90, p. 3
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*These pages may be archived for tracing the history of a rule.

	Remove Old Pages*	Insert New Pages
Medical Examiners Board[653]	Analysis, p. 1—Ch 10, p. 11	Analysis, p. 1—Ch 3, p. 5
	Ch 11, p. 7—Ch 11, p. 10a	Ch 11, p. 7—Ch 11, p. 10
	Ch 11, p. 13, 14	Ch 11, p. 13, 14
	Ch 11, p. 17—Ch 12, p. 2	Ch 11, p. 17—Ch 12, p. 2
	Ch 12, p. 25, 26	Ch 12, p. 25, 26
	Ch 13, p. 5—Ch 14, p. 10	Ch 13, p. 5—Ch 14, p. 3
	Ch 16, p. 3	Ch 16, p. 3—Ch 17, p. 11
PUBLIC SAFETY DEPARTMENT[661]	Ch 2, p. 7, 8	Ch 2, p. 7, 8
	Ch 2, p. 13, 14	Ch 2, p. 13, 14
Index Volume	"P" Tab, p. 19-30	"P" Tab, p. 19-30

*These pages may be archived for tracing the history of a rule.

Schedule for Rule Making
2001

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 22 '00	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sept. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sept. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	May 25	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	June 22	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	July 20	Aug. 8	Sept. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sept. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Aug. 17	Sept. 5	Oct. 10	Jan. 7 '02
July 6	July 25	Aug. 14	Aug. 29	Aug. 31	Sept. 19	Oct. 24	Jan. 21 '02
July 20	Aug. 8	Aug. 28	Sept. 12	Sept. 14	Oct. 3	Nov. 7	Feb. 4 '02
Aug. 3	Aug. 22	Sept. 11	Sept. 26	Sept. 28	Oct. 17	Nov. 21	Feb. 18 '02
Aug. 17	Sept. 5	Sept. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '02
Aug. 31	Sept. 19	Oct. 9	Oct. 24	Oct. 26	Nov. 14	Dec. 19	Mar. 18 '02
Sept. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 9	Nov. 28	Jan. 2 '02	Apr. 1 '02
Sept. 28	Oct. 17	Nov. 6	Nov. 21	Nov. 23	Dec. 12	Jan. 16 '02	Apr. 15 '02
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 7	Dec. 26	Jan. 30 '02	Apr. 29 '02
Oct. 26	Nov. 14	Dec. 4	Dec. 19	Dec. 21	Jan. 9 '02	Feb. 13 '02	May 13 '02
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '02	Jan. 4 '02	Jan. 23 '02	Feb. 27 '02	May 27 '02
Nov. 23	Dec. 12	Jan. 1 '02	Jan. 16 '02	Jan. 18 '02	Feb. 6 '02	Mar. 13 '02	June 10 '02
Dec. 7	Dec. 26	Jan. 15 '02	Jan. 30 '02	Feb. 1 '02	Feb. 20 '02	Mar. 27 '02	June 24 '02
Dec. 21	Jan. 9 '02	Jan. 29 '02	Feb. 13 '02	Feb. 15 '02	Mar. 6 '02	Apr. 10 '02	July 8 '02
Jan. 4 '02	Jan. 23 '02	Feb. 12 '02	Feb. 27 '02	Mar. 1 '02	Mar. 20'02	Apr. 24 '02	July 22 '02

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

GUIDE FOR TRACKING RULE-MAKING DOCUMENTS

There are two steps in every regular rule-making process:
Notice of Intended Action and
Adopted and Filed

For minimum and maximum time frames, refer to "Schedule for Rule Making" printed on p. 15 herein and in the Iowa Administrative Bulletin (IAB).

	Date
Submitted Notice of Intended Action to Administrative Rules Coordinator (ARC)	_____
Notice—publication date in IAB	_____
First possible review by Administrative Rules Review Committee*	_____
Deadline for written comment (at least 20 days after Notice)	_____
Public hearing—time and place, if any	_____
First possible adoption date (35 days after publication of Notice)	_____
Filing deadline for submission to ARC if adopted on first possible adoption date	_____
Adopted and Filed—publication date in IAB and IAC	_____
First possible effective date (35 days after publication date of the Adopted and Filed rules)	_____
Expiration date of Notice of Intended Action (180 days after Notice or date of last public hearing on proposed rule, whichever is later)	_____

NOTE: The agency shall terminate any expired Notices of Intended Action [17A.4(1)*"b"*]

*See Agenda of Administrative Rules Review Committee meetings published at least monthly in the Iowa Administrative Bulletin.

Basic Instructions for Rule Writing

Agencies must submit an original and four copies of all rule-making documents (signed and dated on last page by authorized person) to the Administrative Rules Coordinator (ARC), Governor's Office, Room 11, Capitol Building. The appropriate Form A, B or C, available from the ARC, must be attached to one copy. Documents must be received by the Coordinator by 12 noon on the filing deadline.

In addition, an electronic version of the rule-making document must be submitted to the Administrative Code Editor, either on diskette or as an attachment to an E-mail. After the document has been published in the Iowa Administrative Bulletin (IAB), diskettes from agencies will be returned unchanged. One copy of the document, showing editorial changes, will also be returned to the agency.

Agencies should format rule-making documents as follows:

1. Double space on 8½" × 11" paper using 12-point type.

2. Set margins as follows:
   Top of page: 2 inches on first page, 1 inch on other pages;
   Left, right and bottom: approximately 1 inch.

3. Indent the first line of each paragraph ½ inch.

4. Number pages (centered, at bottom).

5. Center in capital letters the agency name and bracketed agency identification number.

6. Identify the type of rule-making action (centered below the agency name and number):

   Notice of Intended Action
   Amended Notice of Intended Action
   Notice of Termination
   Notice of Termination and Notice of Intended Action
   Adopted and Filed
   Adopted and Filed Without Notice
   Adopted and Filed Emergency
   Adopted and Filed Emergency After Notice

Writing a Preamble

Notice of Intended Action

1. Cite the specific section of the Iowa Code or Iowa Acts that gives the agency the statutory authority for the proposed rule making. Indicate the number and title of the chapter(s) to be amended, adopted or rescinded.

2. Summarize the subject matter of and the reasons for the rule making.

3. Establish a deadline which is at least 20 days after the publication date of the Notice for interested parties to submit comments. Give the name, address and telephone number of a contact person for the agency. E-mail addresses and fax numbers may also be included.

4. If a public hearing is to be held, provide the date, time and location. The hearing must be at least 20 days after the Notice of Intended Action is published.

5. If the rule making necessitates annual expenditures in excess of $100,000, a Fiscal Impact Statement is required. [§25B.6]

6. Indicate whether the proposed rules or amendments are subject to waiver.

7. Cite the statute that the rules or amendments are intended to implement.

Amended Notice of Intended Action

Cite the specific statutory authority for the rule making and reference, by ARC number and IAB publication date, the Notice of Intended Action that the agency proposes to amend. In addition, explain how and why the original Notice of Intended Action is being amended.

Notice of Termination

Cite the specific statutory authority for rule making; identify, by ARC number and IAB publication date, the Notice of Intended Action to be terminated; and explain why the Notice of Intended Action is being terminated.

Notice of Termination and Notice of Intended Action

A Notice of Termination and a Notice of Intended Action may be combined in one document which includes the information required for the preamble of each document.

Writing a Preamble (continued)

Adopted and Filed

1. Cite the specific section of the Iowa Code or Iowa Acts that gives the agency the statutory authority for the rule making. Indicate the number and title of the chapter(s) which is amended, adopted or rescinded.

2. Summarize the subject matter of and the reasons for the rule making.

3. Identify, by ARC number and IAB publication date, the Notice of Intended Action.

4. Summarize comments received from the public.

5. Explain any substantive changes from the Notice or state that the rules or amendments are identical to those published under Notice of Intended Action.

6 Cite the statute that the rules or amendments are intended to implement.

7. Specify an effective date. The effective date can be no sooner than 35 days after publication of the Adopted and Filed document in the Iowa Administrative Bulletin.

Adopted and Filed Without Notice

1. Cite the specific section of the Iowa Code or Iowa Acts that gives the agency the statutory authority for the rule making. Indicate the number and title of the chapter(s) which is amended, adopted or rescinded.

2. Summarize the subject matter of and the reasons for the rule making.

3. Explain, pursuant to Iowa Code section 17A.4(2), why the normal rule-making process regarding notice and public participation was bypassed.

4. Cite the statute that the rules or amendments are intended to implement.

5. Specify an effective date. The effective date can be no sooner than 35 days after publication of the Adopted and Filed document in the Iowa Administrative Bulletin.

Writing a Preamble (continued)

Adopted and Filed Emergency

1. Cite the specific section of the Iowa Code or Iowa Acts that gives the agency the statutory authority for the rule making. Indicate the number and title of the chapter(s) which is amended, adopted or rescinded.

2. Summarize the subject matter of and the reasons for the rule making.

3. Explain why the normal rule-making process regarding notice and public participation, pursuant to Iowa Code section 17A.4(2), was bypassed.

4. Explain why, pursant to Iowa Code section 17A.5(2)"*b,*" the normal effective date was waived.

5. Cite the statute that the rules or amendments are intended to implement.

6. Specify an effective date. The effective can be the date the document is filed with the Administrative Rules Coordinator or any date thereafter.

Adopted and Filed Emergency After Notice

1. Cite the specific section of the Iowa Code or Iowa Acts that gives the agency the statutory authority for the rule making. Indicate the number and title of the chapter(s) which is amended, adopted or rescinded.

2. Summarize the subject matter of and the reasons for the rule making.

3. Identify, by ARC number and IAB publication date, the Notice of Intended Action.

4. Summarize comments received from the public.

5. Explain any substantive changes from the Notice or state that the rules or amendments are identical to those published under Notice of Intended Action.

6. Cite the statute that the rules or amendments are intended to implement.

7. State the reasons, pursuant to Iowa Code section 17A.5(2)"*b,*" for setting an effective date which is sooner than that allowed by the normal rule-making process.

8. Specify an effective date. The effective can be the date the document is filed with the Administrative Rules Coordinator or any date thereafter.

"Double Barreling"

The simultaneous submission of an Adopted and Filed Emergency document and a Notice of Intended Action pertaining to the same rules or amendments is known as "double barreling."

•Each document must cross-reference the other document by ARC number.

•The Notice of Intended Action document may, at the end of the preamble, incorporate by reference the content of the Adopted and Filed Emergency rule making.

NOTE: When the Notice of Intended Action portion of a "double barrel" is adopted, the Adopted and Filed document must include the following:

•A paragraph which identifies, by ARC number and IAB publication date, the Notice of Intended Action and the ARC number of the simultaneously published Adopted and Filed Emergency document.

• The paragraph which specifies the effective date should read as follows:

"These amendments (rules) shall become effective on _____, ____, at which time the Adopted and Filed Emergency amendments (rules) are hereby rescinded."

Miscellaneous Notes

•When citing a publication, include the date or edition. References to CFRs require a date certain. Do not use "as amended" unless a specific date is cited.

•Avoid repeating or substantially paraphrasing a statute when drafting rules. However, a statute or a part thereof may be included in rules by reference.

•Use "shall" to impose a duty; "will" reflects future tense and "may" denotes an option.

•When rules are renumbered or rescinded, references to those rules must also be changed.

•Avoid using the following:

he/she, him/her, or any reference to one gender when both are intended;
now; presently; previously; currently; hereafter;
and/or (courts have held this to be a meaningless expression).

•Spell out numbers from one through ten; use figures for numbers above ten.

•Use figures for numbers that have technical significance or need to stand out for quick comprehension, e.g., in tables, charts, percentages, money, ratios, clock time, dates, measurements.

•Abbreviations and acronyms may be used if they have been defined in the rules.

•Arrange definitions in alphabetical sequence and do not number them.

Deadlines and Dates

The deadline for submitting documents to be published in the IAB is 19 days prior to the publication date. Filing deadlines and publication dates are printed in each IAB on the Schedule for Rule Making page. Rules will not be accepted after 12 o'clock noon on the Friday filing deadline unless prior approval has been received from the Administrative Rules Coordinator. If the filing deadline falls on a legal holiday, submissions made on the following Monday may be accepted. Possible exceptions are Thanksgiving, Christmas, and New Year's Day.

In the regular rule-making procedure, the key date is the date the rule making is published in the Iowa Administrative Bulletin.

PUBLIC HEARINGS AND WRITTEN COMMENTS

The agency must allow a minimum of 20 days for receipt of oral or written comments or before holding any public hearings. [§17A.4(1)*"b"*] The 20-day period is counted from the date the Notice of Intended Action is published in the Iowa Administrative Bulletin. In computing time, the first day is not counted, but the last day is counted.

ADOPTING A RULE

An agency must allow 35 days after the publication of the Notice of Intended Action before adopting a rule. An agency "adopts" a rule when it votes approval or when the person with rule-making authority signs the rule-making document. An agency has 180 days after the publication of a Notice of Intended Action or 180 days after oral presentations, whichever is later, within which to adopt a rule.

TERMINATING A NOTICE

If the agency fails to adopt the rule within the 180-day time frame, it must terminate the proceedings by publishing a Notice of Termination in the Iowa Administrative Bulletin. [§17A.4(1)*"b"*]

EFFECTIVE DATE

•Adopted and Filed: These rules or amendments may become effective 35 days after publication in the IAB, unless a later date is specified by the agency.

•Adopted and Filed Emergency: These rules or amendments may become effective upon filing with the ARC or at a later date specified by the agency.

•Adopted and Filed Emergency After Notice: These rules or amendments may become effective upon filing with the ARC or at a later date specified by the agency.

•Adopted and Filed Without Notice: These rules or amendments may become effective 35 days after publication in the IAB, unless a later date is specified by the agency.

REGULATORY ANALYSIS

The agency shall issue a Regulatory Analysis if, within 32 days after publication of the notice, a written request is filed with the agency by the ARRC, the ARC, at least 25 small business persons signing the request, or a registered organization representing at least 25 persons.

A concise summary of the Regulatory Analysis must be published in the IAB 20 days prior to the adoption of the rule. In the case of a rule adopted emergency or without notice, 70 days are allowed for publishing of the summary. [17A.4A]

CHAPTER 44
ON-SITE CONTAINMENT OF PESTICIDES, FERTILIZERS, AND SOIL CONDITIONERS

PESTICIDES

FERTILIZERS AND SOIL CONDITIONERS

CHAPTER 45
PESTICIDES

DIVISION I

CHAPTER 50
IOWA FARMERS MARKET/WOMEN INFANTS CHILDREN PROGRAM

21—50.1(159) Authority and scope. This chapter establishes procedures governing the administration of a farmers market special supplemental food program by the department of agriculture and land stewardship for implementing the applicable agreement and guidelines set forth by the United States Department of Agriculture, Food and Nutrition Service Agreement, in accordance with 1990 Iowa Acts, chapter 1260, section 1, subsection 3.

Information may be obtained by contacting the Agricultural Diversification Bureau, Iowa Department of Agriculture and Land Stewardship, Wallace Building, Des Moines, Iowa 50319, telephone (515)281-5402.

21—50.2(159) Severability. If any provision of a rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and, to this end, the provisions of these rules are severable.

21—50.3(159) Program description and goals. The Iowa farmers market/women infants children program is jointly funded by the state of Iowa and the United States Department of Agriculture—Food and Nutrition Service. The intent of the program is to supply locally grown fresh produce to recipients of the special supplemental food program through the distribution of vouchers that are redeemable only at designated farmers markets. The program is designed to provide both a supplemental source of fresh produce for the dietary needs of women, infants, and children who are judged to be at nutritional risk and to stimulate an increased demand for locally grown fresh produce at Iowa farmers market.

21—50.4(159) Definitions. For the purposes of this chapter:

"Application" means a request made by an individual to the department for vendor certification in IFM/WIC on a form provided by the agricultural diversification bureau of the department.

"Authorized farmers market" means a farmers market that operates within the service area and is a site authorized by the department for the exchange of vouchers and locally grown fresh produce.

"Certified vendor" means an individual who has met all IFM/WIC conditions as outlined by the department and who is guaranteed payment on all vouchers accepted, provided compliance is maintained by that individual regarding all IFM/WIC rules and procedures as outlined in the vendor certification handbook.

"Certified vendor identification card" means a department-issued card that shall be presented by the certified vendor during each occurrence of voucher deposit in the financial institution of certified vendor choice. This card shall remain the sole property of the department with immediate forfeiture by the certified vendor to the department in the event of suspension.

"Certified vendor identification sign" means department-issued signage which shall be clearly displayed by the certified vendor at all times when accepting or intending to accept vouchers in an authorized farmers market. Signs shall remain the sole property of the department with immediate forfeiture by the certified vendor to the department in the event of suspension.

"Certified vendor number" means a personal number issued for a given season by the department and assigned to an individual whom the department has identified as a certified vendor. The certified vendor number shall be affixed to the certified vendor identification card and the certified vendor identification sign, and the certified vendor will enter the number on each voucher that is submitted for deposit. An individual shall be assigned no more than one certification number for any given season.

"Certified vendor stall" means all of the area in an authorized farmers market that is dedicated to a certified vendor for the purpose of displaying and offering product for sale. The only exceptions permitted shall be:

1. If the certified vendor elects not to promote any of said area as IFM/WIC for an entire farmers market day; or

2. If the certified vendor elects to exclude a portion of the space by maintaining a distance of separation from the certified vendor stall by a minimum of two farmers market vendors who are neither affiliated with nor related to the certified vendor and who are actively participating in the farmers market on the given day. An excluded area shall be operated independent of the certified vendor stall. Exceptions shall hold only if neither acceptance nor intent to accept vouchers exists.

"Department" means the Iowa department of agriculture and land stewardship.

"Designated distribution clinic" means a site authorized by the department for dispersal of vouchers by the local agency.

"Distribution" means the process outlined by the department and the means by which local agencies actually dispense vouchers to eligible recipients.

"Farmers market" means a cooperative or nonprofit enterprise or association that consistently occupies a given site throughout the season, which operates principally as a common marketplace for a group of farmers to sell locally grown fresh produce directly to consumers, and where the majority of products sold are produced by the participating farmers with the sole intent and purpose of generating a portion of household income.

"Fresh produce" means fruits and vegetables that have not been processed in any manner. This term does not include such items as nuts, herbs, popcorn, vegetable plants/seedlings, dried beans/peas, seeds/grains, and flowers.

"IFM/WIC" means the Iowa farmers market supplemental food program for women, infants, and children as administered by the department.

"Local agency" means an entity that administers local health programs and which has entered into contract for voucher distribution and related service with the department.

"Locally grown" means produce that has a trackable point of origin either within Iowa or in an adjacent county to Iowa's border in a neighboring state.

"Posted hours and days" means the operational time frames stated in assurances submitted by a duly authorized representative of an authorized farmers market which includes a beginning and an ending date for each year of operation.

"Recipient" means a client of WIC who is at least five months of age, who possesses one of the WIC classification codes selected for inclusion by the department, and is an active participant in a designated distribution clinic.

"Season" means a clearly delineated period of time during a given year that has a beginning date and ending date, as specified by the department, which correlates with a major portion of the harvest period for locally grown fresh produce, and does not exceed four months in any given calendar year.

"Secretary" means the secretary of agriculture for the state of Iowa.

"Service area" means the geographic areas that encompass all of the designated distribution clinics and authorized farmers markets within Iowa for a given season.

"USDA-FNS" means the United States Department of Agriculture—Food and Nutrition Service.

"Vendor certification handbook" means a publication by the department that is based on USDA-FNS mandates and guidelines, addresses all IFM/WIC rules and procedures applicable to a certified vendor, and provides the basis for vendor training. A copy of the publication shall be issued to each individual prior to application. New editions supersede all previous editions.

"Voucher" means a negotiable instrument issued by the department to recipients that is redeemable only for locally grown fresh produce from certified vendors at authorized farmers markets, with a limited negotiable period that directly correlates to the season designated by the department.

"WIC" means the special supplemental food program for women, infants and children, as administered by the Iowa department of public health.

GENERAL PROVISIONS

21—50.5(159) Administration and agreements.

50.5(1) The program shall be administered by the secretary or by the secretary's designee.

50.5(2) The department shall maintain all conditions as outlined in the farmers market nutrition agreement entered into with USDA-FNS, as amended.

21—50.6(159) Distribution of benefits.

50.6(1) Iowa department of public health WIC client screening processes and records shall provide the basis for identifying recipients eligible for receipt of vouchers.

50.6(2) Local agencies shall distribute vouchers at designated distribution clinics to recipients in the manner specified by the department in the program and procedures guide for distribution clinic staff. Local agency services shall include, but not be limited to, ensuring:

a. Vouchers are distributed only to recipients through verification that the client name and number printed on the voucher and distribution registry correspond with the client name and number printed on the WIC identification folder in the possession of the recipient.

b. Each recipient is issued five $2 vouchers during each distribution as authorized by the department, with no one recipient receiving a benefit value greater than $20 during a season.

c. The voucher serial numbers issued to the recipient correspond to the numbers in the distribution registry in which the recipient signature is affixed.

d. Each voucher issued and the distribution registry are properly signed by the recipient in the presence of local agency staff at the time of distribution.

e. A proxy is not allowed to act on behalf of a recipient, except in the case of a parent or legal guardian acting in behalf of a recipient child or infant, or in the case of a husband acting in behalf of his wife.

f. Each recipient shall be provided a thorough explanation of program guidelines and recipient responsibility as outlined by the department.

g. All IFM/WIC support materials are put into use as outlined by the department.

h. Accurate and complete records of all related IFM/WIC activities in the possession of a local agency will be maintained and retained for a minimum of four years. In the event of litigation, negotiation, or audit findings, the records shall be retained until all issues arising from such actions have been resolved or until the end of the regular four-year period, whichever is later.

i. All agency records pertaining to this program shall be made available for inspection to representatives of USDA, the comptroller general of the United States, the state auditor, the department, and the Iowa department of public health as necessary, at any time during normal business hours, and as frequently as is deemed necessary for inspection and audit. Otherwise, confidentiality of personal information shall be maintained on all recipients participating in the program at all times.

21—50.7(159) Recipient responsibilities. Recipients shall be responsible for, but not limited to, the following:

1. Qualifying under WIC program guidelines and attending a designated distribution clinic during the relevant distribution cycles when vouchers are dispersed.
2. Properly countersigning and dating voucher(s) at time of use in the presence of the certified vendor who is accepting each in exchange for fresh produce.
3. Using vouchers only to purchase locally grown fresh produce from certified vendors who display IFM/WIC signs at authorized farmers markets.
4. Redeeming vouchers on or before the expiration date printed on the face of the voucher, or surrendering all claim to the value of vouchers that remain unredeemed.
5. Ensuring vouchers that are received are not assigned to any other party other than as outlined.
6. Reporting violations or problems to the department or the local agency.
7. Reporting all incidents of lost or stolen vouchers to the local agency.

21—50.8(159) Farmers market authorization and priority.

50.8(1) A farmers market shall be eligible for authorization provided such farmers market possesses a consistently good track record of operation known by the department which shall be based in part upon the submission of assurances by a duly authorized representative of the farmers market. Farmers market assurances shall be submitted in a manner outlined by the department and shall provide evidence as to whether a farmers market possesses the capability to service the additional demands brought about by distribution of vouchers in the area without causing undue harm to the existing farmers market consumer base and indications of willingness by persons associated with the farmers market to meet all IFM/WIC requirements. Information submitted by a farmers market shall include but not be limited to:

a. The number of locally grown fresh produce vendor participants,

b. Hours of operation to be maintained per week,

c. Season of operation, and

d. Accessibility and consistency of farmers market location.

50.8(2) The department shall give priority to a farmers market with previous involvement in IFM/WIC, provided the farmers market possesses a good track record for maintaining conditions outlined in its farmers market assurances, does not have a high incidence of certified vendor noncompliance or suspensions, and a voucher usage rate no less than 5 percent below the usage rate in the USDA-FNS agreement, as amended.

50.8(3) A principal factor in determining farmers market authorization shall pertain to the number of eligible applications received by the department prior to the first of March that indicate the intent to participate in the given farmers market. The standard for the authorization of a single or principal farmers market in a county shall be one eligible application for every 100 recipients who participate in the distribution clinic(s) in said county. A minimum of five eligible applications is required for a farmers market to receive authorization.

50.8(4) The number of farmers markets authorized for the season shall be determined by the department no later than the first day of March prior to each season.

21—50.9(159) Vendor certification.

50.9(1) Vendor certification shall not be in effect and vouchers shall not be accepted until receipt by the applicant of a certified vendor identification card, a certified vendor identification sign and the applicant copy of the department-vendor agreement.

50.9(2) Vendor certification expires at the end of each year of issuance. Individuals must annually apply and receive vendor certification in order to participate in IFM/WIC.

50.9(3) The department does not limit the number of vendors who may become certified under IFM/WIC. A vendor who satisfies all the following criteria shall be certified to accept vouchers.

a. Agrees to maintain at least 20 percent of all products on display in a certified vendor stall as locally grown fresh produce.

b. Indicates an intent to participate in one or more authorized farmers markets.

c. Demonstrates participation in training on IFM/WIC rules and procedures, either through attendance in an entire session of one of the scheduled training meetings conducted by department staff or successfully responding to 90 percent of the questions on a test pertaining to certified vendor obligations.

d. Submits a signed statement of receipt of a vendor certification handbook.

e. Submits a completed application to the department prior to the deadline.

f. Submits completed and signed certified vendor agreements to the department.

21—50.10(159) Certified vendor obligations. A certified vendor shall be responsible for, but not limited to, the following:

1. Accept vouchers only for a transaction that takes place at an authorized farmers market and only in exchange for locally grown fresh produce.
2. Identify self to recipients by prominently displaying a certified vendor identification sign as outlined in the certified vendor handbook.
3. Provide locally grown fresh produce to recipients upon receipt of a valid and properly completed voucher, which is dated and countersigned with a matching signature at the time of sale.
4. Accept vouchers as payment for locally grown fresh produce only if presented on or before the usage expiration date printed on the face of the voucher.
5. Handle transactions with recipients in the same manner as transactions with all other customers.
6. Not collect state or local taxes on purchases involving vouchers.
7. Charge recipients a price for locally grown fresh produce that is equal to or less than the current price charged to nonrecipient customers.
8. Not levy a surcharge based on the use of vouchers by recipients.
9. Return no cash or issue credit in any form to recipients during sales transactions that involve vouchers only. In the event of a single transaction in which a recipient presents a combination of cash and vouchers for the purchase of locally grown fresh produce, cash or credit up to the value of the cash portion of the payment shall be given to the recipient.
10. Participate in training as the department deems necessary to carry out the intent of IFM/WIC.
11. Cooperate with the department in the evaluation of each season by completely and accurately responding to a survey, with resubmission to the department in a specified and timely manner.
12. Immediately inform the department in the event of loss, destruction, or theft of either the certified vendor identification card or certified vendor identification sign so that a replacement may be issued.
13. Comply with all procedures and rules as herein outlined and as delineated in the department-vendor agreement, the certified vendor handbook, and official written notices of clarification issued by the department to the vendor.

21—50.11(159) Certified vendor noncompliance sanctions.

50.11(1) A voucher shall be returned to the certified vendor unpaid if the certified vendor identification number is not properly affixed to the face of the voucher, the certified vendor does not endorse the voucher, if either the recipient signature or the countersignature is missing on the face of the voucher, or if the two signatures do not match. A voucher may be resubmitted for payment in the event that the signature or vendor certification identification error can be properly and legally corrected by the certified vendor.

50.11(2) Violations of IFM/WIC procedures and rules applicable to a certified vendor shall be identified as Class I violations, Class II violations, and Class III violations.

Violations involving the use of multiple vouchers in a single sales transaction shall be considered as a single violation. Violations involving multiple sales transactions, regardless of time elapsed, shall be considered multiple violations at a standard of one violation per sales transaction.

a. Class I violations shall result in a warning letter from the department to the violating certified vendor. The following shall constitute Class I violations:

(1) Acceptance of three IFM/WIC vouchers without the redemption date entered on the face of the voucher.

(2) Failure to appropriately display the certified vendor identification sign.

b. Class II violations shall result in an official written citation of noncompliance from the department to the violating certified vendor. The following shall constitute Class II violations:

(1) Noncompliance with rules and procedures as outlined in the vendor certification handbook and in the department-vendor agreement, and which is not specifically identified as a Class I violation.

(2) Recipient is charged a price that is greater than that charged nonrecipients or is charged for items not received.

(3) Refusal to accept valid vouchers for locally grown fresh produce.

(4) Failure to permit or comply with procedures regarding inspection of evidence by the department when point of origin of fresh produce on display or offered for sale in a certified vendor stall is in question.

(5) Abusive or discriminatory treatment of recipients or IFM/WIC staff.

(6) Failure to display and offer minimum required volumes of locally grown fresh produce while participating as a certified vendor.

(7) Displaying or offering for sale nonlocally grown fresh produce in a certified vendor stall.

(8) Cashing vouchers for a noncertified vendor.

(9) An authorized farmers market is neither open nor staffed during posted hours and days during the season in which the certified vendor is a designated participant.

(10) Exchanging ineligible products or cash for vouchers.

(11) The second like instance of a Class I violation by a single certified vendor.

c. Class III violations shall result in the suspension of the violating vendor from participation in IFM/WIC. The following shall constitute Class III violations:

(1) The third like instance of a Class I violation by a single vendor;

(2) The second like instance of a Class II violation by a single vendor.

50.11(3) Official notice of noncompliance. A written official notice of noncompliance shall be issued to the certified vendor by the department within 72 hours of receipt of evidence involving an act of noncompliance.

50.11(4) Suspension. Suspension of a certified vendor from participation in IFM/WIC shall remain in effect for the remainder of the season. An exception shall occur when suspension occurs within 30 days of the expiration date for voucher usage by recipients. In such case, suspension shall also include the entire season of the following calendar year.

In the event of a suspension, the department shall have the right to reimbursement from the vendor an amount equal in value to vouchers deposited and paid upon after the official date of suspension notification.

At the conclusion of a suspension period, the vendor must reapply for and receive certification in order to resume participation in IFM/WIC.

50.11(5) Probationary status. Any vendor successfully recertified following a suspension will be on probationary status for one full season.

Recurrence of a Class II violation during the probationary period and for which the certified vendor has been cited shall be sufficient grounds for immediate and automatic suspension.

21—50.12(159) Appeal. A written notice of noncompliance or suspension from the department shall be pending for 72 hours of receipt by the certified vendor. The certified vendor shall be granted the pending period for presenting sufficient evidence to the department to substantiate a reversal.

Remedies undertaken in response to receipt of written notice of a pending citation of noncompliance or suspension shall not constitute evidence in defense of such citation.

Failure to present any evidence to the department within the specified pending period shall constitute acceptance of the citation of noncompliance or suspension by the certified vendor. Submission of insufficient evidence by the certified vendor for determination of reversal on the pending citation by the department shall result in an official citation of noncompliance or suspension upon completion of the pending period.

Subsequent to the exhaustion of all remedies as outlined in this chapter and as stated in the vendor certification handbook, a vendor shall be entitled to use the provisions of 21—Chapter 2.

21—50.13(159) Deadlines.

50.13(1) *Submission of farmers market assurances.* Assurances, on forms provided by the department, must be submitted no later than the last day of February in order for the farmers market to receive consideration of authorization for the upcoming season.

50.13(2) *Submission of vendor application.* All applications shall be submitted no later than one month preceding the last date in which vouchers may be used by recipients at authorized farmers markets.

50.13(3) *Recipient voucher usage expiration.* Vouchers shall be valid for recipient use from the time of issue through the season ending date as designated by the department. Such date shall be clearly printed on the voucher face. Voucher usage shall be null and void after expiration date.

50.13(4) *Certified vendor voucher reimbursement.* All vouchers accepted by a certified vendor shall be deposited on or before 14 days following the date of expiration for voucher usage by recipients. Such date shall be clearly printed in the endorsement space on the back of the voucher. Any claim to voucher payment beyond the voucher reimbursement expiration date is not valid and shall be denied.

50.13(5) *Submissions by local agency.* Deadlines for submission of records, reports, survey instruments and undistributed vouchers by local agencies shall be established by the department and specified in the agreement entered into with the local agency.

50.13(6) *Operations report to USDA-FNS.* The department shall develop and submit a completed operations report in January in a manner prescribed by USDA-FNS which summarizes the IFM/WIC operations for the previous year.

These rules are intended to implement 1990 Iowa Acts, chapter 1260, section 1, subsection 3, and Iowa Code chapter 159.

[Filed 4/10/91, Notice 12/12/90—published 5/1/91, effective 6/5/91]

CHAPTER 51
REMEDIATION OF AGRICHEMICAL SITES

21—51.1(78GA,ch1184) Definitions. As used in this chapter:

"Department" means department of agriculture and land stewardship.

21—51.2(78GA,ch1184) Agrichemical remediation board. The agrichemical remediation board was established by 2000 Iowa Acts, chapter 1184, section 3, and is charged with the responsibility of executing remediation agreements; reviewing and determining the eligibility for site remediation; approving administrative costs of the department; and consulting with the department in the adoption of rules necessary to carry out the provisions of 2000 Iowa Acts, chapter 1184, section 3.

51.2(1) *Organization and operation location.* The agrichemical remediation board is located within the Department of Agriculture and Land Stewardship, Henry A. Wallace Building, East 9th and Grand, Des Moines, Iowa 50319. The department's office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

51.2(2) *Membership.* The agrichemical remediation board consists of seven members as set forth in 2000 Iowa Acts, chapter 1184, section 3.

51.2(3) *Staff.* Staff assistance is provided through the department as designated by the secretary of agriculture.

51.2(4) *Advisors.* The agrichemical remediation board may solicit input from advisors without restriction as determined by the board.

51.2(5) *Meetings.* The agrichemical remediation board shall meet on a regular basis and annually to elect a chairperson. The board shall meet at other times at the call of the chairperson or upon written request to the chairperson by two or more members. Meetings may be in person or via telephone conference as determined by the chairperson.

a. All board meetings shall comply with Iowa Code chapter 21. A quorum of an absolute majority of the board members must be present to transact business. Action by the board requires the approval of an absolute majority of board members.

b. Meetings will follow Robert's Rules of Order. Minutes of each meeting will be available from the Secretary of Agriculture, Department of Agriculture and Land Stewardship, Henry A. Wallace Building, East 9th and Grand, Des Moines, Iowa 50319.

51.2(6) *Open records.* All public records of the board are available for public inspection during business hours. Requests to obtain records may be made by regular mail, by electronic mail, by telephone or in person to the secretary's office, department of agriculture and land stewardship. Minutes of the board meetings may be obtained without charge. Other records requiring more than five copies may be obtained upon payment of the actual cost of copying.

51.2(7) *Budget.* The agrichemical remediation board shall submit a proposed budget to the secretary of agriculture no later than May 1 of each year.

51.2(8) *Reports.* The agrichemical remediation board shall submit a report to the general assembly by January 10 of each odd-numbered year. The report shall provide a summary and a detailed accounting of the board's financial condition including expected revenue and expenses during the following two years.

These rules are intended to implement 2000 Iowa Acts, chapter 1184, section 3.

[Filed emergency 12/8/00—published 12/27/00, effective 12/8/00]

CHAPTERS 52 to 57
Reserved

CHAPTER 58
NOXIOUS WEEDS

21—58.1(317) Definition. As used in this chapter, "sterile" means any plant or variety that is incapable of reproduction or which is either noninvasive or nonaggressive in that the plant does not spread into areas where it was not initially planted.

21—58.2(317) Purple loosestrife. The following Lythrum (purple loosestrife) cultivars are derived from Lythrum virgatum that are sterile or nonaggressive and can be sold for planting in ornamental gardens.

1. Rose queen
2. The rocket
3. Morden pink
4. Morden gleam
5. Morden rose
6. Dropmore purple
7. Columbia pink

Any person selling or offering for sale any or all of the above-listed varieties shall prominently display a sign to inform purchaser it is legal to plant the above-listed Lythrum virgatum in "ornamental gardens" only.

21—58.3(317) Records. A person selling or offering for sale any or all of the varieties listed in rule 58.2(317) shall retain in the person's possession records on the inventory of such varieties acquired, sold, or retained by the person. These records shall include the identity and address of the supplier of any of the varieties. These records shall be retained for a period of three years and shall be available to the department for inspection during the person's regular business hours.

These rules are intended to implement Iowa Code section 317.25.

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ATTORNEY GENERAL[61]

DEPARTMENT OF JUSTICE

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CHAPTER 9
VICTIM ASSISTANCE PROGRAM
[Prior to 9/20/89, see Public Safety[661] Ch 17]

DIVISION I
ADMINISTRATION

61—9.1(912) Definitions.

"Board" means crime victim assistance board.

"Department" means Iowa department of justice.

"Director" means director of the crime victim assistance division established in the department of justice.

61—9.2(912) Board.

9.2(1) A crime victim assistance board is established pursuant to Iowa Code section 912.2A.

9.2(2) Members of the board shall serve terms for three years and are eligible for reappointment to the board by the attorney general.

9.2(3) The initial term of the board members shall commence on July 1 of the state fiscal year.

61—9.3(912) Expenses.

9.3(1) Board members shall be reimbursed from the victim's compensation fund for expenses actually and necessarily incurred in the discharge of their duties including attendance at board meetings, board committee meetings, and other activities on behalf of the board as designated by the board chair and approved by the department. Reimbursement for expenses shall conform with guidelines established by the department of revenue and finance.

9.3(2) A member of the board may receive, in addition to actual expense reimbursement, a per diem which conforms with guidelines established by the department of revenue and finance.

9.3(3) Expenses of the board and individual members shall be submitted to the director.

61—9.4(912) Chair of the board.

9.4(1) The attorney general shall select one of the members of the board to serve as chair of the board. The chair shall serve at the pleasure of the attorney general.

9.4(2) A member who is chair of the board and relinquishes or is removed as the chair may maintain board membership for the remainder of the term for which the member was originally appointed.

61—9.5(912) Resignations.

9.5(1) Resignations from the board shall be made to the attorney general.

9.5(2) Whenever a member of the board ceases to have the statutory qualifications for appointment to the board, that member shall be considered to have resigned and a vacancy shall occur on the board.

9.5(3) A board member shall be deemed to have submitted a resignation from the board if any of the following events occur:

a. The member does not attend three or more consecutive regular meetings of the board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least 30 days apart.

b. The person attends less than one-half of the regular meetings of the board within any period of 12 calendar months beginning July 1. This paragraph applies only to such a period beginning on or after the date when the person is appointed to the board.

c. If the member receives no notice and had no knowledge of a regular meeting and gives the attorney general a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this rule.

d. The attorney general at the attorney general's discretion may accept or reject such resignation. If the attorney general accepts it, the attorney general shall notify the member, in writing, that the resignation is accepted pursuant to this rule. The attorney general shall then make another appointment to fill the vacancy.

61—9.6(912) Vacancies. Barring unusual circumstances, vacancies on the board shall be filled within 45 days after the attorney general is advised of the vacancy. Vacancies shall be filled for the remainder of the vacant term.

61—9.7(912) Meetings. The board shall meet a minimum of once per quarter. The board may also meet at the call of the chair or upon the written request to the chair of at least five members of the board.

61—9.8(912) Duties of board. The board shall adopt rules pursuant to Iowa Code chapter 17A relating to the administration of the crime victim assistance division including the adoption of administrative rules relating to the following:

1. Administration of grants received under the federal Victims of Crime Act of 1984 pursuant to Pub. L. No. 98-473, Title 2, Chapter 14, 42 U.S.C. Section 10601, as amended by the Children's Justice and Assistance Act of 1986, Pub. L. No. 99-401, 100 Stat. 903 and as amended by the Anti-Drug Abuse Act of 1988, Title VII, subtitle D, Pub. L. No. 100-690.
2. Administration of the Family Violence Prevention and Services Act grant pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. Section 10401, reauthorized in 1988, Pub. L. No. 100-294.
3. Administration of the domestic abuse and rape crisis funds and the Iowa domestic abuse hotline funds provided in Iowa Code chapter 236.
4. Administration of other grants or funds available by public law for victim assistance and administered by the department.
5. Administration of the victim compensation program provided in Iowa Code chapter 912.
6. Administration of sexual abuse examination payments as provided in Iowa Code section 709.10.
7. Appeal procedures for victim compensation claims denied by the department.
8. Appeal procedures for grants administered by the department and denied by the board.

61—9.9(912) Director and staff. The attorney general shall employ a director and staff for the victim assistance division and they shall be employees of the department.

61—9.10(912) Duties of department. In addition to the duties contained in Iowa Code section 13.13, the department shall:

1. Administer other funds, grants, or programs for victim assistance created by public law or the department.
2. Provide administrative support to the board.
3. Enter into agreements under Iowa Code chapter 28E or other law including agreements with other state agencies and political subdivisions for the transfer to the department of funds authorized by law for victim service programs.
4. Accept, use, and dispose of contributions of money, services, and property, which are made available by an agency or department of the state or any of its political subdivisions, the federal government, a private agency, or an individual, that are specifically designated for crime victim assistance programs.

61—9.11 to **9.24** Reserved.

DIVISION II
CRIME VICTIM COMPENSATION

61—9.25(915) Administration of the crime victim compensation program. The crime victim assistance division of the department of justice shall administer the crime victim compensation program as provided in Iowa Code chapter 915. All questions, comments, requests for information, or applications for compensation shall be directed to the crime victim assistance division. Requests should be addressed to Crime Victim Assistance Division, 100 Court Avenue, Suite 100, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

61—9.26(915) Definitions. For rules of the crime victim compensation program of the crime victim assistance division of the department of justice, the following definitions apply:

"Affinity" means the relationship of persons who are related by marriage, cohabitation, or engagement to be married.

"Applicant" includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section 915.80(6).
2. A person responsible for the care and maintenance of a victim.
3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and the act occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law.
4. In the event of a victim's death, the spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant who shall benefit from the proceeds of the estate.
5. A legal representative authorized to act on behalf of any of the persons listed above.

"Board" means the crime victim assistance board of the department of justice.

"Causal relationship" means that the crime would not have occurred without the action of the victim. A causal relationship exists if the actions of the victim result in a foreseeable injury, play a substantial role in the injury, or directly cause the injury.

"Claimant" means an applicant who has been found to be eligible for compensation.

"Cohabiting" means living in the same household. It is not necessary to establish that a sexual relationship exists between the parties.

"Compensation" means moneys awarded by the division as authorized in Iowa Code chapter 915.

"Consent" means to agree to a course of action or to voluntarily allow what is planned or done by another.

"Counseling" means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided in person on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning. Counseling does not include victim advocacy services such as crisis telephone counseling; conversation in a nonprivate setting such as the common area of a shelter or a courthouse; transportation; or attendance at medical procedures, law enforcement interviews or civil and criminal justice proceedings.

"Crime" as defined in Iowa Code section 915.80 includes:

1. Conduct punishable as a misdemeanor or a felony.
2. Property crimes including but not limited to robbery, residential burglary, and residential arson, where there is a threat of personal injury or harm against a person.
3. Violation of a custody order in which the custodial parent suffers injury.

"Denial" means disqualification of an application or reduction in the amount of compensation paid.

"Department" means the department of justice, attorney general's office.

"Dependent" means a person who is unable to care for himself or herself due to injury, disability, or minor age status.

"Director" means the director of the crime victim assistance division established in the department of justice.

"Division" means the crime victim assistance division of the department of justice.

"Incitement" means to urge forward or to goad to action.

"Income" or *"wages"* means gross income or gross wages.

"Medical care" means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, osteopathic physician or surgeon, chiropractor, podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

"Medically necessary" means items and services, prescribed by a medical provider under the prescriptive authority of the medical provider's license, which are reasonably necessary to facilitate the victim's physical and emotional recovery from the compensable crime.

"Pecuniary loss" means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim's county of residence, or health insurance premiums covered by an employer previous to the victim's disability from the crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent that the victim has not been and shall not be indemnified from any other source.

"Personal injury" or *"injury"* means bodily harm or mental suffering and shall include a victim's pregnancy or miscarriage resulting from a crime.

"Program" means the crime victim compensation program of the department of justice.

"Provocation" means to cause anger, resentment, or deep feelings that cause or instigate another to take action.

"Public funds" means moneys provided by federal, state, county, city or other local government.

"Reasonable charges" means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

61—9.27(915) Duties of the division. The duties of the division shall include, but not be limited to, the duties provided for in Iowa Code sections 13.31 and 915.83, as well as:

1. To prepare appropriate forms for the filing and processing of compensation applications.
2. To conduct an administrative review of claims when a request for reconsideration is filed by an applicant with the director.
3. To receive moneys bequeathed, awarded, or donated to the crime victim assistance division by a public or private organization or individual.

61—9.28(915) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime pursuant to Iowa Code section 915.84(1). For a victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, the date of the discovery of the crime shall be considered to be the date when the referral was made. The department may waive the requirements of Iowa Code section 915.84(1) if good cause is shown.

9.28(1) *Application postmarked.* An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) *Good cause.* In determining whether there is good cause for waiver of the two-year application filing requirement, the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.28(3) *Multiple erroneous claims.* When two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a file with multiple erroneous applications. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers. The department will notify the applicant whenever two or more applications have been combined as one application.

9.28(4) *Program effective date.* The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date are not eligible for compensation.

9.28(5) *Concurrent primary and secondary applications.* A victim may be both a primary victim and a secondary victim in the same crime. The secondary victim application shall not be opened until a benefit has been exhausted for the primary application and there is documentation of need for further benefits in that category. The secondary victim application shall be considered timely filed if the primary victim application was timely filed.

9.28(6) *Concurrent secondary victim applications.* A victim may be a secondary victim to multiple primary victims in a crime. A subsequent secondary victim application shall not be opened until a benefit has been exhausted in the first secondary victim application and there is documentation of need for further benefits in that category. Subsequent secondary victim applications shall be considered timely filed if the primary victim application was timely filed.

61—9.29(915) Report to law enforcement. A person is not eligible for compensation unless the crime is reported to law enforcement pursuant to Iowa Code section 915.84(2). The department may waive the requirements of Iowa Code section 915.84(2) if good cause is shown.

9.29(1) *Law enforcement report sources.* The department finds there is good cause to accept that the report of a crime to any of the following is a report to law enforcement pursuant to Iowa Code section 915.84(2):

a. Sheriffs and their regular deputies.

b. Marshals and police officers of cities.

c. Peace officers of the department of public safety.

d. Special security officers employed by a board of regents institution as identified in Iowa Code section 262.13.

e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.

f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.

g. Correctional officers, including parole and probation officers.

h. County and state prosecutors.

i. An employee of the department of human services having jurisdiction to investigate the incident.

j. A magistrate or judge of the Iowa court system.

9.29(2) *Elements of a report.* A victim is considered to have made a report to law enforcement when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

a. The nature of the crime,

b. The location of the crime,

c. The name, whereabouts and description of the suspect, if known, and

d. The names of witnesses, if known.

9.29(3) *Law enforcement record.* A law enforcement trip record may satisfy the requirement that the crime be reported to law enforcement.

9.29(4) *Good cause.* In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.29(5) *Child victim.* If the victim is a child as defined in Iowa Code section 232.2 and is reported to be a victim of child abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(6) *Dependent adult victim.* If the victim is a dependent adult as defined in Iowa Code section 235B.2(4) and is reported to be a victim of dependent adult abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(7) *Sexual abuse victim.* For a victim of sexual abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a sexual abuse evidentiary examination was completed within 72 hours of the crime and the victim files a subsequent law enforcement report.

9.29(8) *Domestic abuse victim.* For a victim of domestic abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a pro se protection order pursuant to Iowa Code chapter 236 is entered by the court and the victim files a subsequent law enforcement report.

9.29(9) *Victim of a sexually violent predator.* For a victim of sexual abuse, the department finds good cause to waive the 72-hour reporting requirement when the offender is referred pursuant to Iowa Code chapter 229A.

61—9.30(915) Cooperation with law enforcement. To be eligible for compensation, the victim of crime must cooperate with the reasonable requests of law enforcement.

9.30(1) *Reasonable cooperation.* Reasonable cooperation by the victim may include, but is not limited to, the following:

a. Providing law enforcement with a true and accurate report of the crime.

b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested including the review of photographs, composites, and lineups.

c. Participating in prosecution procedures including deposition and trial testimony as requested.

9.30(2) *Determination of cooperation.* In determining whether a victim reasonably cooperated with law enforcement, the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.30(3) *Polygraph testing.* In determining whether a victim reasonably cooperated with law enforcement, the refusal of a victim to undergo a polygraph examination shall not be the basis of denial.

9.30(4) *Sexual abuse victim.* A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.30(5) *Domestic abuse victim.* A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

61—9.31(915) Contributory conduct. The division shall reduce or disqualify compensation when there is a causal relationship between the contributory conduct on the part of the victim and the victim's injury or death. Contributory conduct includes consent, provocation, or incitement of the crime on the part of the victim.

9.31(1) *Consent, provocation, and incitement.* In assessing consent, provocation or incitement on the part of the victim pursuant to Iowa Code section 915.87(2)*"a,"* the division may consider factors including, but not limited to, the following:

a. Whether charges are filed against the suspect;

b. Whether the victim attempted to withdraw from the incident;

c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;

d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;

e. The age of the victim; and

f. Comparable size or strength of the victim and suspect.

9.31(2) *Additional assessment of consent.* In assessing the causal nature of consent pursuant to Iowa Code section 915.87(2)*"a,"* the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.31(3) *Consent in intoxicated driving cases.* A victim who was the passenger in the vehicle of a driver who has been determined to have been legally intoxicated at the time of the crash shall not be automatically denied eligibility for compensation. The division may consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

9.31(4) *Additional assessment of provocation and incitement.* In assessing the causal nature of provocation or incitement pursuant to Iowa Code section 915.87(2)*"a,"* the division may consider law enforcement documentation that indicates:

a. *Retaliatory action.* The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. *Gang action.* The crime was a direct result of gang activity, including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1(2).

c. *Mutual combat.* The crime was an incident of mutual combat if the victim:

(1) Initiated a physical altercation;

(2) Made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or

(3) Accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge and a physical altercation immediately followed.

d. *Exception to mutual combat.* Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

9.31(5) *Victim's criminal act.* Contributory conduct includes assisting in, attempting, or committing a criminal act by the victim. A causal relationship must be documented between the injury or death for which compensation is sought and the criminal act of the victim.

61—9.32(915) Eligibility for compensation. The program shall determine the eligibility of an application for compensation.

9.32(1) *Determination of eligibility.* A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 915. An applicant shall be deemed eligible for compensation if the division has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the division may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.32(2) *Reopening applications.* Pursuant to Iowa Code section 915.83(2), the department may reopen and reinvestigate an application if the department determines that the decision was incorrect or incomplete. A denied application may be reopened and reinvestigated if it is discovered through a criminal trial or other investigatory source that the information relied upon for the denial decision was incorrect or incomplete. The eligibility of an approved application will be reopened for consideration if information is discovered through a criminal trial or other investigatory source that indicates that there is reason to deny the application. The reopening of a denied or approved case is at the discretion of the administrator for the compensation program.

9.32(3) *Withdrawal of application.* An applicant may withdraw the application for compensation from consideration.

9.32(4) *Maximum compensation.* Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable pursuant to Iowa Code chapter 915 and these rules has been awarded.

61—9.33(915) Emergency award of compensation. Emergency awards of compensation may be made if the applicant has incurred a loss of income or pecuniary loss as a direct result of the crime.

9.33(1) *Preliminary eligibility determination.* The program must determine that the application is likely to be eligible based on documentation available including, at minimum, the law enforcement verification form provided to law enforcement by the program.

9.33(2) *Documentation.* To make an emergency award of compensation, the program must have documentation of the lost wages or the pecuniary loss.

9.33(3) *Emergency award decision.* A decision denying an emergency award shall not be appealable.

9.33(4) *Offset.* Any emergency award shall be deducted from the final award of compensation made to the claimant.

61—9.34(915) Computation of compensation. The division shall determine the amount of compensation to be awarded to an eligible applicant.

9.34(1) *Benefit limits.* Compensation shall be made up to the benefit category limits in effect on the date the application is filed. For an eligible victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, compensation shall be paid for expenses incurred after referral of the offender.

9.34(2) *Payer-of-last-resort.* The program is a payer-of-last-resort pursuant to federal law 42 U.S.C. 10602(1403). Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime.

9.34(3) *Voluntary financial programs.* Compensation applicants will be encouraged to apply for other financial assistance programs to pay costs resulting from the crime-related injury. However, no applicant will be denied compensation benefits based on the applicant's refusal to seek funds from a voluntary financial assistance program.

9.34(4) *Insurance providers.* Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or sign the required assignment of benefits within a reasonable time frame.

9.34(5) *Supplanting of funds prohibited.* Compensation shall be made only when the claimant is responsible for the cost of crime-related injury. Compensation shall not be paid when a government entity, including but not limited to a mental health facility, jail, or prison, is responsible for the costs of treatment for injury from crime.

61—9.35(915) Computation of benefit categories. The division shall determine the amount of compensation to be awarded to an eligible applicant for injury from crime for each benefit category pursuant to Iowa Code section 985.86.

9.35(1) *Medical care.* Compensation may be paid for the reasonable expenses of medical care provided to eligible crime victims by, or under the supervision of, a person licensed by the state under Iowa Code chapter 147, 148, 148A, 148E, 149, 150A, 151, 152C, or 153. When preexisting medical conditions are treated during crime-related medical care, the program may reduce payment to a percentage equal to the portion of the medical care determined to be directly related to the compensable crime. Medical care expenses include the following:

a. *Medical care sanctioned by sovereign nations and tribes.* Compensation may be paid for medical care rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

b. *Medical counseling costs.* Compensation may be paid for counseling provided under the direct supervision of a psychiatrist or other physician and shall be applied toward the medical benefit maximum.

c. *Medical care for homicide victim survivors.* Compensation may be paid to the spouse, child, parent, sibling, or person related by blood or affinity to a homicide victim for the same types of medical care which are allowable for primary victims, including but not limited to hospital and physician care, psychiatric care, prescriptions, and transportation expenses related to injury from the crime.

d. *Medical equipment and property alteration.* Compensation may be paid for equipment and property alteration which are prescribed as medically necessary care due to injury from the crime.

e. *Medical supplies.* Compensation may be paid for medical care supplies and incidental supplies necessary for medical care due to injury from the crime.

f. *Medical care for pregnancy.* Compensation may be paid for medical care costs related to pregnancy resulting from the crime of sexual abuse. Eligible expenses for care of the victim shall be paid. Expenses incurred for care of a newborn child are not compensable.

g. *Medical devices.* Compensation may be paid for the replacement of a medical device including but not limited to a sight or hearing device, dentures, prosthetic device, wheelchair, and medication that was taken, lost or destroyed during the crime.

h. *Transportation for medical emergency.* Compensation may be paid for the reasonable cost of transportation in a medical emergency by private vehicle at the state rate for boards and commissions per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation. Transportation within a city limits will be based on the program's estimate of mileage from the location of the injured victim to the medical facility.

i. *Transportation for nonemergency care.* Compensation may be paid for the cost of transportation by commercial vehicle or by private car for nonemergency medical care and counseling received outside of the victim's county of residence. Transportation provided by private vehicle for nonemergency care will be reimbursed at the state rate for boards and commissions per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation.

j. Transportation medical benefit. Compensation may be paid for transportation from the applicable medical care or counseling benefit category. The available funds to the victim from the applicable benefit category will be reduced by the amount of compensation paid for transportation.

k. Health insurance. Compensation may be paid for premiums to continue a health insurance policy that was provided in whole or in part by the victim's employer prior to the crime and the employment ceased as a result of the crime.

9.35(2) *Medical care records.* When compensation for medical care is requested, the provider shall submit medical records that document the care provided and show that the medical care is for injury from crime.

9.35(3) *Mental health counseling.* Compensation may be paid for the reasonable costs of mental health counseling for eligible crime victims and survivors of a homicide victim. When preexisting mental health issues are addressed during crime-related counseling, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime. The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the professional licensing board. Compensation shall be paid for mental health counseling provided by the following:

a. Master's level counselor. Compensation may be paid for mental health counseling provided by a person holding at least a master's degree in a mental health or counseling field including but not limited to social work, psychology, guidance and counseling, behavioral sciences, art therapy, marriage and family therapy, child life therapy, and advanced mental health registered nursing.

b. Supervised mental health counselor. Compensation may be paid for mental health counseling provided by a counselor who does not have a master's degree but is under the supervision of a counselor with a master's degree. The supervising mental health counselor must sign the session notes which must be submitted for review by the program.

c. Intern mental health counselors. Compensation may be paid for mental health counseling provided by an intern candidate for a master's degree when the counseling is provided within a course of professional education and the intern is supervised by a provider eligible for compensation.

d. Out-of-state providers. Compensation may be paid to mental health counselors outside Iowa who provide services to victims of crime eligible for the Iowa program if the mental health counselor meets the professional licensure criteria of the state in which the counselor works.

9.35(4) *Mental health counseling records.* When compensation for mental health counseling is requested, the provider shall complete verification forms related to the counseling as follows:

a. Treatment plan and certification form. Information submitted on the treatment plan and certification form shall include, but not be limited to, a summary of the initial evaluation, any preexisting mental health diagnoses currently being treated, current diagnoses, issues addressed, counseling goals, expected length of counseling services, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

b. Treatment progress and certification form. At six-month intervals for the duration of the crime-related mental health counseling, the provider shall submit a treatment progress and certification form. Information on the form shall include progress on previously stated goals of counseling, current goals, current diagnosis, expected length of additional counseling, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

c. Session notes. The program may require submission of session notes to determine if the mental health counseling is directly related to the crime when:

(1) The counseling expenses for a victim exceed $3,000.

(2) The provider has not completed the treatment and certification plan with statement of the percentage of treatment directly related to the crime.

(3) The counseling begins, or is provided, more than one year after the crime.

(4) The treatment plan or progress summary indicates that the victim is receiving treatment for a diagnosis or issue not exacerbated by the crime.

9.35(5) *Victim service counseling.* Reasonable charges for counseling provided by a victim counselor as defined in Iowa Code sections 236A.1 and 915.20A, when fees for services to the general public for services of a similar nature have not previously been established, may be paid within the following guidelines:

a. Counselors funded with VOCA. Counseling provided by victim counselors whose position is funded, in whole or in part, or whose position is used as match requirement for federal Victims of Crime Act fund shall not be eligible for compensation payment.

b. Computation of victim service counseling expenses. Counseling services provided to an eligible victim by a victim counselor may be compensated as follows:

(1) Individual counseling at an hourly rate of $35.

(2) Group counseling at an hourly rate of $20.

c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.35(6) *Victim service counseling records.* A record of each counseling session shall be maintained in the victim's file including the date of service, the length of service, the name of the victim counselor who provided the service, the general topics addressed, and referrals made.

9.35(7) *Counseling with the perpetrator.* Compensation for mental health or victim service counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part only to take responsibility for the crime and apologize to the victim and the victim is allowed to confront the perpetrator regarding the effects of the crime.

9.35(8) *Family counseling.* Compensation for family mental health or victim service counseling may be paid only for sessions where the victim is present and the focus of the session is to assist the victim in recovery from a compensable crime.

9.35(9) *Lost wages or income.* Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of injury from crime or as a result of cooperation with the investigation or prosecution of the crime. Lost wages or income due to crime is determined as follows:

a. *Gross wages computed.* Lost wages are computed as the gross rate of pay times the number of scheduled hours of work missed.

b. *Variable income.* Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime. Estimated earnings not supported by past income statements shall not be accepted.

c. *Self-employment and small business income.* Self-employed persons or small business employees must provide federal or state income tax forms for the most recent year completed or verification of average income for a minimum of the past six months. Work estimates, labor contracts, and affidavits from individual employers may be used to establish wages.

d. *Vacation, sick, holiday and annual leave.* Lost wages or income paid shall not be reduced by vacation, sick, holiday, or annual leave available or used by the victim due to the crime.

9.35(10) *Lost wages or income due to disability.* Compensation shall be paid for lost wages incurred by an eligible crime victim within two weeks after injury from crime or an eligible survivor of a homicide victim for up to five days within two weeks after the death of a victim without an authorized disability statement. Compensation for lost wages may be paid to the spouse, child, or parent of the homicide victim for up to one month without a disability statement as determined reasonable by the program. A victim or survivor of a homicide victim seeking lost wages for a longer period of time shall submit a disability statement from a licensed physician. Compensation shall be made for lost wages under the following circumstances:

a. *Victim injured.* Compensation may be paid when the victim cannot work due to injury from crime.

b. Lost hire income. Compensation may be paid when the victim has been hired by an employer but is unable to begin employment because of injury due to the crime, until medically released to work. Required documentation includes a signed affidavit by the employer.

c. Employment terminated. Compensation may be paid when the victim is terminated from employment as a result of crime-related injuries, until medically released to seek work.

d. Unemployment eligible. Compensation may be paid for the difference between the victim's gross wage and the unemployment benefit when the victim is terminated from employment because of injury from crime and is found to be eligible for unemployment benefits.

e. Unemployment ineligibility. Compensation may be paid for the amount of the victim's unemployment benefit when the victim is rendered ineligible for unemployment benefits because of injury from the crime, until the victim is medically released to work.

f. Worker compensation benefit eligible. Compensation may be paid for the difference between the victim's gross wage and the worker compensation benefit when the victim is unable to work because of injury from crime and is found to be eligible for worker compensation benefits.

g. Medical and counseling appointments. Compensation may be paid to a primary victim, the parent or guardian of a minor aged primary victim, or the caretaker of a dependent adult primary victim for wages lost due to medical care or counseling appointments for the victim.

9.35(11) *Lost wages or income during investigation and prosecution.* Compensation may be paid for lost wages incurred by an eligible primary victim, survivor of a homicide victim as described in Iowa Code section 915.86(8), parent or guardian of a minor aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime including, but not limited to, participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

9.35(12) *Residential crime scene cleanup.* Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene, which includes a home, or a private vehicle in which the crime was committed. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the value of property which is essential to the victim and which is held by law enforcement for evidentiary purposes. Cleaning a residential crime scene does not include replacement or repair of property damaged in the crime.

9.35(13) *Loss of support.* Compensation for loss of support may be paid for the dependents of an eligible homicide victim or of a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Period of dependency. Compensation may be paid for loss of support for the remaining period of dependency, up to the limits established in Iowa Code section 915.86(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 915.87(1).

b. Dependent care. Compensation may be paid for loss of support at the current hourly rate of the Iowa minimum wage for dependent care provided by a person other than the victim if the victim was providing physical care to the dependent at the time of the crime.

9.35(14) *Clothing and bedding.* Compensation may be paid for clothing and bedding held as evidence by law enforcement and not returned to the victim. Compensation shall not be made for the clothing of a deceased victim which is held as evidence.

9.35(15) *Funeral and burial expenses.* Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible crime victim. The following expenses may be paid up to the maximum expense established in Iowa Code section 915.86(4):

a. *Funeral service.* Compensation may be paid for expenses related to funeral and burial or cremation preparation and services.

b. *Burial plot and vessel.* Compensation may be paid for the cost of a burial plot, vault, casket, urn, or other permissible vessel.

c. *Burial effects.* Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the homicide victim as described in Iowa Code section 915.87(8) with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

61—9.36(915) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award.

9.36(1) *Applicant appeal.* An applicant may appeal a compensation decision as follows:

a. *Appeal to director.* An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the director.

b. *Appeal to board.* An applicant may appeal the director's decision to the board.

c. *Appeal to district court.* An applicant who disagrees with the decision of the board has the right to appeal to the district court for judicial review within 30 days of receipt of the board's decision.

9.36(2) *Director appeal period.* An applicant shall submit to the director a written request for reconsideration within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the division. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the director shall issue a decision.

9.36(3) *Board appeal period.* An applicant may file with the board a request for consideration of the director's decision. This written request for consideration by the board shall be submitted within 30 days of the date the notice of the director's decision is mailed or otherwise issued by the director. Any request for review postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 90 days of the receipt of the request, the board, or a committee designated by the chair of not fewer than five members of the board, shall issue a decision.

9.36(4) *District court appeal period.* An applicant shall submit a petition for judicial review to the district court within 30 days of the receipt of the notice of the board's decision.

These rules are intended to implement Iowa Code sections 915.80 through 915.94.

61—9.37 to **9.49** Reserved.

DIVISION III
VICTIM SERVICES GRANT PROGRAM

61—9.50(13) Administration of the victim services grant program. The victim services grant program of the Iowa department of justice shall administer the victim services grants as provided in Iowa Code chapters 13 and 236. All questions, comments, requests for information, or applications for grant funds shall be directed to the victim services grant program. Requests should be addressed to: Crime Victim Assistance Division, Iowa Department of Justice, Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044.

61—9.51(13) Definitions. As used in this chapter:

"Applicant" means a victim service program providing direct services to crime victims or technical assistance to crime victim service providers that makes a request for funds from the victim services grant program.

"Application" means a request which complies with federal and state requirements for funds from the following:

1. The Federal Victims of Crime Act pursuant to Pub. L. No. 98-473, Title 2, Chapter 14, 42 U.S.C. Section 10601 as amended by the Federal Children's Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).
2. The domestic abuse funding provided for in Iowa Code chapter 236.
3. The Family Violence Prevention and Services Act pursuant to the Federal Child Abuse Amendments of 1984 Pub. L. No. 98-457, 42 U.S.C. Section 10401.
4. Other grants or funds available by law for crime victim assistance.

"Board" means the crime victim assistance board.

"Department" means the Iowa department of justice.

"Director" means director of the crime victim assistance division of the department of justice.

"Division" means the crime victim assistance division of the Iowa department of justice.

"Grant" means a victim services grant award.

"Grantee" means the Iowa department of justice when it administers a grant from a federal or state agency.

"Grant review committee" means a department of justice committee designated to review grant applications.

"Program" means the victim services grant program in the Iowa department of justice.

"RFP" means request for proposals.

"Subgrantee" means any applicant receiving grant funds from this program.

"Victim" means a crime victim as defined in Iowa Code section 912.1(5).

61—9.52(13) Program description. Any eligible public agency or nonprofit organization or a combination thereof may apply for and receive a grant through the program. The program shall operate as a competitive grants program and be administered by the department. Contractual agreements specifying the terms of the grant award shall be executed between the department and approved applicants.

61—9.53(13) Availability of grants. In any year in which federal or state funds are available, the department shall administer grants to eligible applicants. The amount of the funds awarded shall be contingent upon the funds available. The director shall announce the opening of an application period through public notice. Applications must be submitted by the designated due date.

61—9.54(13) Application requirements. Applicants shall submit applications to: Crime Victim Assistance Division, Iowa Department of Justice, Old Historical Building, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the department and shall be available upon request to all interested parties.

9.54(1) In order to be included in the review process and considered for funding, an application shall be received in the offices of the division by 4:30 p.m. on the due date. Applications may be delivered to the division during regular business hours anytime prior to the deadline. An extension of the filing deadline may be requested of the director or grant administrator prior to the deadline and may be granted for good cause. The determination of a good cause extension by the division shall be final.

9.54(2) An applicant shall have on file with the department current copies of the applicant's table of organization and articles of incorporation.

9.54(3) An applicant shall have on file with the department evidence of any insurance coverage the applicant carries for liability or property.

61—9.55(13) Contents of application. Each application shall contain the following information:

9.55(1) A brief narrative describing the agency or unit of local government requesting funding.

9.55(2) A description of services for which funding is being requested which includes, but is not limited to, the following:

a. The geographical area to be served.

b. The target population to be served.

c. Victim eligibility requirements.

d. Description of substantial financial support from other sources.

e. Intended use of volunteers, if any.

f. Stated goals and objectives of the program.

g. A description of the proposed victim service or technical assistance including a time schedule for implementation.

h. The amount of grant funds requested.

i. The amount of cash or in-kind resources or combination thereof which is committed as required by the program.

j. A description of how the proposed victim service or technical assistance will provide or improve direct services to victims of crime.

k. Proof of coordination with appropriate agencies at the local level.

l. A total program budget for all services provided by the applicant.

m. A proposed budget for the requested grant funds.

n. A list of other anticipated sources of income, including written commitments, if possible, and plans for continued funding of the grant funded activities.

o. Other information identified in the RFP.

p. Signed certified assurances as required by statute or regulation.

61—9.56(13) Eligibility requirements. Funds must be used only to provide services to victims of crime or technical assistance to victim service providers. Program grants cannot be used to supplant other available or mandated funds. An applicant must meet the following requirements:

9.56(1) Be operated by a public agency or nonprofit organization, or combination thereof, that provides services to crime victims. Services provided to victims may include but are not limited to crisis intervention services, law enforcement and court advocacy, group and individual counseling, transportation, and information and referral services. An applicant providing services to victims of domestic abuse must also have the capacity to provide or arrange safe shelter for victims and their children. An applicant providing services to victims of sexual assault must have the capacity to provide support to victims at the time of an evidentiary sexual abuse examination.

9.56(2) An existing program must be able to document results of prior programming that demonstrates that the needs of victims have been met effectively and that the applicant has financial support from other sources.

9.56(3) Promote within the community a coordinated public and private effort to assist victims.

9.56(4) Be an equal opportunity employer and provide services on an equal opportunity basis.

9.56(5) Comply with applicable federal and state statutes or rules, any requirements specified in the grant between the department and any outside funding source, and any requirements in the RFP or any other contractual document.

9.56(6) Assist victims in seeking state compensation benefits.

9.56(7) Have a grievance procedure established for victims, employees and volunteers.

9.56(8) Ensure that all employees and volunteers that provide direct services to victims are trained as victim counselors as defined in Iowa Code section 236A.1.

9.56(9) Provide services within the geographic service area without regard to a victim's ability to pay.

61—9.57(13) Selection process. The department shall conduct a preliminary review of each application to ensure that the applicant is eligible, the application is complete, and the proposed victim service or technical assistance is consistent with the division's mission of providing assistance to crime victims and crime victim programs.

9.57(1) A grant review committee shall be established by the department for the purpose of reviewing grant applications. The committee shall submit recommendations for grant awards to the director and board.

9.57(2) The board shall determine final subgrantees and grant awards to the extent that funds are available and to the extent to which applications meet the RFP criteria. The board may reject any or all applications.

61—9.58(13) Notification of applicants. Applicants shall be notified within 60 days after the application due date whether their application has been denied or the board is interested in negotiating a contract regarding their proposal.

61—9.59(13) Request for reconsideration.

9.59(1) Applicants may file a request for reconsideration of the denial or amount of an award with the board. The request for reconsideration must be submitted within ten working days of the date the notice of decision is mailed or otherwise issued by the director to the subgrantee. The request must state adequate grounds for reconsideration. The board or a committee designated by the board chair shall review the request and evidence submitted in a timely manner. A decision of the board or designated committee shall constitute final agency action.

9.59(2) At the time a request for reconsideration is received by the director, notice that a request for reconsideration has been filed shall be sent to all approved applicants whose funds may be affected by the request.

9.59(3) Funds shall not be disbursed pending a request for reconsideration to the extent that the funds are affected by the outcome of the request. All applicants who would be adversely affected shall be notified if a request for reconsideration is approved and grant awards shall be reduced as necessary.

61—9.60(13) Contract agreement.

9.60(1) A contract shall be negotiated by the department and the applicant.

9.60(2) The department or the board may require modification of the proposed program, submission of further information or documents, or other contingency on the part of the applicant prior to entering into contract. The required modification, information, document, or contingency shall be specified in the notification of grant award.

9.60(3) The applicant or the department may request a modification of the program budget to reflect the amount, expenses and activities allowed by the grant award. Both parties must agree to any modification of the subgrantee program budget.

9.60(4) In the event of a state, federal, or other audit, the subgrantee shall be responsible for the audit and liable for payment of any funds required to conduct the audit, to compensate for any grant disallowance, or to repay any funds received or spent contrary to the contract, these rules, or applicable law.

9.60(5) Funds shall be spent to meet the program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

9.60(6) The subgrantee shall sign the certified assurances for the grant program at the time of application and at any time requested by the division.

9.60(7) Nothing in these rules shall be construed as limiting the remedies available to the state or the program for improper use of grant funds or other breach of the subgrantee's duties under the contract and applicable law.

61—9.61(13) Performance reports. Performance reports shall be submitted to the department from all subgrantees. Failure to submit reports by the due date shall result in suspension of financial payments to the subgrantee by the grantee until such time as the report is received. Delinquent or inadequate reports from prior grants may detrimentally influence the award of grants for the following year.

61—9.62(13) Termination. Contracts may be terminated for the following reasons:

1. Termination by subgrantee. The contract may be terminated by the subgrantee at any time during the contract period by providing notice to the department.

2. Termination by department. The department may terminate a contract upon a ten-day notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The department may terminate a contract when there is a reduction of funds by executive order or otherwise.

3. Termination for cause. If the subgrantee fails to fulfill its obligations under the agreement properly or on time, or otherwise violates any provision of the agreement, the board may terminate the agreement by written notice to the subgrantee. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the department, become the state's property. The department shall pay the subgrantee fair and equitable compensation for the satisfactory performance prior to receipt of notice of termination minus any funds owing to the department, e.g., damages for breach, improperly spent funds.

61—9.63(13) Financial statement supplied. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

61—9.64(13) Indemnification. The subgrantee shall defend, indemnify, and hold harmless the state of Iowa, its officers, agents and employees and any of the state's federal funding sources for:

1. Subgrantee's performance or nonperformance of a contract entered into or violation of these rules.

2. Subgrantee's activities with subcontractors and all other third parties, or any other act or omission by a subgrantee, its agents, officers, and employees.

61—9.65(13) Records. Subgrantees shall keep statistical records of services provided and any other records as required by the department. The department shall have immediate access to records pertaining to the contract during working hours. No notice need be provided the subgrantee prior to inspection of the records.

61—9.66 to **9.79** Reserved.

These rules are intended to implement Iowa Code chapter 912.

DIVISION IV
SEXUAL ABUSE EXAMINATION PAYMENT
[Prior to 8/8/90, see Public Health Department 641—Chapter 8]

61—9.80(709) Administration of sexual abuse examination payment. The crime victim assistance program of the department of justice shall administer the sexual abuse examination program as provided in Iowa Code section 709.10. That section states in part:

"The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be borne by the department of justice."

Requests for payment should be addressed to: Sexual Abuse Examination Payments, Crime Victim Assistance Program, Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044 or 1-800-373-5044.

61—9.81(709) Definitions.

"Administration" means administrator of the crime victim assistance program established in the department of justice.

"Board" means crime victim assistance board.

"Department" means the Iowa department of justice.

"Eligible claimant" means a medical provider that provides a sexual abuse examination to a sexual assault victim. The following are eligible to file a claim with the crime victim assistance program in the event that they have made payment to a medical provider for the costs of a sexual abuse examination:

1. A victim of sexual abuse.
2. A person responsible for the maintenance of a sexual abuse victim.
3. A dependent of a victim who has died as a result of injuries sustained in a sexual assault.
4. The guardian of a sexual abuse victim.

"Reasonable charges" means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

"Sexual abuse" means sexual abuse as defined in Iowa Code sections 709.1 and 726.2.

"Sexual abuse examination" means a medical examination provided to a woman, man, or child to collect evidence of sexual abuse as defined in Iowa Code sections 709.1 and 726.2 and provide treatment for the prevention of venereal disease pursuant to Iowa Code chapter 709. When applicable, the provider of a sexual abuse examination shall file a child abuse report with the Iowa department of human services as required by Iowa Code section 232.70.

61—9.82(709) Application for sexual abuse examination payment.

9.82(1) *Consideration for payment.* The department will consider payment upon receipt of a claim for reimbursement from a medical provider indicating that the claim is for the collection of evidence by sexual abuse examination. In the case that a victim, guardian of a victim, person responsible for the victim, or dependent of a victim who died of injuries sustained in a sexual assault has paid part or all of the charges incurred, a copy of the provider bill and documentation of personal payment of the bill must be submitted for reimbursement. An application for sexual abuse examination payment must include the federal identification number or social security number of the claimant.

9.82(2) *Application filing.* To apply for payment under the sexual abuse examination program, the form or bill submitted must identify the sexual assault victim by name, birth date, and patient number, indicate that the claim is for a sexual abuse examination, and itemize all services rendered and the fee for each service.

61—9.83(709) Computation of sexual abuse examination payments.

9.83(1) *Payment for examination.* The department shall make payment for sexual abuse examinations, as appropriate, for the following services:

a. Physician's fee for collection of:
1. History,
2. Physical,
3. Collection of specimens,
4. Two return visits to test for venereal disease,
5. Treatment for the prevention of venereal disease.

b. Emergency department.
1. Emergency room, clinic room or office room fee,
2. Pelvic tray.

c. Laboratory.
1. Wet mount for sperm,
2. Fixed smear for sperm (pap),
3. Swabs for:
   Acid phosphatase,
   ABH antigen.
4. Blood typing,
5. Serology for syphilis, and Hepatitis B,
6. Cultures for gonorrhea, chlamydia, trichomonas, and other sexually transmitted disease (STD),
7. Pregnancy testing,
8. Urinalysis,
9. Other laboratory tests that are required for the purpose of evidentiary examination.

9.83(2) *Provider payment.* The department will pay up to $200 for the emergency room, or $125 for a clinic or office room, and $100 for physician fees. Any charges in excess of these amounts will require additional documentation from the provider. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

The department will not make payment for the cost of commercial or government prepared sexual abuse kits. The Iowa department of public safety division of criminal investigation makes sexual abuse examination kits available to medical providers at no cost.

61—9.84(709) Victim responsibility for payment. A victim of sexual abuse is not responsible for the payment of the costs of a sexual abuse examination determined to be eligible for payment by the department. A medical provider shall not submit any remaining balance after sexual abuse examination program payment to the sexual abuse victim.

61—9.85(709) Sexual abuse examination—right to restitution. In all criminal cases under Iowa Code chapter 709 and sections 726.2 and 710.2 in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, restitution may be ordered from the offender to the crime victim assistance program for the cost paid by the department for a sexual abuse examination rendered to the victim of that crime pursuant to Iowa Code section 910.2.

61—9.86(709) Erroneous or fraudulent payment—penalty. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipients, the recipient is liable for repayment of the reparation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date of payment, the recipient is not responsible for repayment to the department.

If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment to the department.

61—9.87(709) Right to appeal. An eligible claimant who disagrees with the department's decision concerning payment or amount of payment has the right to request reconsideration of that decision by the crime victim assistance board. The request for reconsideration must be received by the department within 60 days after the decision of the department is mailed.

Rules 9.80(709) to 9.87(709) are intended to implement Iowa Code section 709.10.

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◊Two ARCs
*History transferred from 641—Chapter 8, 8/8/90
**Effective date of 61—9.50(13) to 9.65(13) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995; delay lifted by this Committee 4/10/95.

Abnormal gas consumption. A customer who is subject to disconnection for nonpayment of bill, and who has gas consumption which appears to the customer to be abnormally high, may request the utility to provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. The utility shall provide assistance by discussing patterns of gas usage which may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance which may be available to the customer.

i. Without the written 12-day notice, for failure of the customer to comply with the terms of a payment agreement, provided that:

(1) In the case of a customer owning or occupying a residential unit that will be affected by disconnection, the utility has made a diligent attempt, at least one day prior to disconnection, to contact the customer by telephone or in person to inform the customer of the pending disconnection and their rights and remedies; if an attempt at personal or telephone contact of a customer occupying a unit which a utility knows or should know is a rental unit has been unsuccessful, the landlord of the rental unit, if known, shall be contacted to determine if the customer is still in occupancy and, if so, their present location. The landlord shall also be informed of the date when service may be disconnected.

During the period November 1 to April 1, if the attempt at customer contact fails, the premises must be posted with a notice informing the customer of the pending disconnection and rights or remedies available to avoid disconnection at least one day prior to disconnection; if the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the utility to contain residential units affected by disconnection must be posted, at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons therefor.

(2) The disconnection of a residential customer may not take place on a weekend, a holiday or after 2 p.m., unless the utility is prepared to reconnect the same day, and may not take place where gas is used as the only source of space heating or to control or operate the only space heating equipment at the residence, on any day when the National Weather Service forecast for the following 24 hours covering the area in which the residence is located includes a forecast that the temperature will go below 20 degrees Fahrenheit. In any case where the utility has posted a disconnect notice in compliance with 19.4(15)*"h"*(3) but is precluded from disconnecting service because of a National Weather Service forecast, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the area where the residence is located rises to above 20 degrees, unless the customer has paid in full the past due amount or is entitled to postponement of disconnection under some other provision of this rule.

(3) Disconnection of a residential customer shall be postponed if the discontinuance of service would present an especial danger to the health of the customer or any permanent resident of the premises. An especial danger to health is indicated if one appears to be seriously impaired and may, because of mental or physical problems, be unable to manage their own resources, carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances which indicate a severe or hazardous health situation. The utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered, a statement that the person is a resident of the premises in question, the name, business address, and telephone number of the certifying party, the nature of the health danger and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

Verification shall postpone disconnection for 30 days; however, the postponement may be extended for a renewal of the verification. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. The customer must pay the unpaid balance under the payment agreement within the first 30 days and keep the current account paid during the period that disconnection is postponed.

j. For failure of the customer to furnish such service equipment, permits, certificates, or rights of way necessary to serve said customer as shall have been specified by the utility as a condition to obtaining service, or in the event such equipment or permissions are withdrawn or terminated.

19.4(16) *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

a. Delinquency in payment for service by a previous occupant of the premises to be served.

b. Failure to pay for merchandise purchased from the utility.

c. Failure to pay for a different type or class of public utility service.

d. Failure to pay the bill of another customer as guarantor thereof.

e. Failure to pay back bill rendered in accordance with 19.4(13)*"b"* (Slow meters).

f. Failure to pay adjusted bills based on the undercharges set forth in 19.4(13)*"e."*

g. Failure of a residential customer to pay a deposit during the period November 1 through April 1 for the location at which he or she has been receiving service.

h. Rescinded IAB 4/15/92, effective 5/20/92.

19.4(17) *When disconnection prohibited.* No disconnection may take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

19.4(18) *Change in character of service.* The following shall apply to a material change in the character of gas service:

a. *Changes under the control of the utility.* The utility shall make such changes only with the approval of the board, and after adequate notice to the customers (see 19.7(6)*"a"*).

b. *Changes not under control of the utility or customer.* The utility shall adjust appliances to attain the proper combustion of the gas supplied. Due consideration shall be given to the gas heating value and specific gravity (see 19.7(6)*"b"*).

c. *Appliance adjustment charge.* The utility shall make any necessary adjustments to the customer's appliances without charge and shall conduct the adjustment program with a minimum of inconvenience to the customers.

19.4(19) *Customer complaints.* Each utility shall investigate promptly and thoroughly and keep a record of written complaints and all other reasonable complaints received by it from its customers in regard to safety, service, or rates, and the operation of its system as will enable it to review and analyze its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date thereof. All complaints caused by a major outage or interruption shall be summarized in a single report.

a. Each utility shall provide in its filed tariff a concise, fully informative procedure for the resolution of all customer complaints.

b. The utility shall take reasonable steps to ensure that customers unable to travel shall not be denied the right to be heard.

c. The final step in a complaint hearing and review procedure shall be a filing for board resolution of the issues.

This rule is intended to implement Iowa Code sections 476.2, 476.6, 476.8, 476.20 and 476.54.

CHAPTER 27
LANDS AND WATERS CONSERVATION FUND PROGRAM
[Prior to 12/31/86, Conservation Commission[290] Ch 72]

571—27.1(456A) Purpose. The purpose of the Federal Land and Water Conservation Fund, hereinafter referred to as the L&WCF, is stated in Section 1(b) of the Land and Water Conservation Fund Act of 1965, as amended (78 stat. 897):

"The purposes of this Act are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas."

Section 6 of the Act contains the basic requirements and conditions for fulfilling the above:

"The Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to provide financial assistance to the States from monies available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this Act, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interest in land or waters, or (3) development."

Section 6 of the Act further provides that:

"If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency."

The Iowa department of natural resources, hereinafter referred to as the department, acting through its director, will administer the L&WCF for the same purpose at the state and local levels.

571—27.2(456A) Apportionment distribution.

27.2(1) *Iowa apportionment.* The state expects to receive an annual apportionment from the L&WCF. This annual apportionment, after deducting any amount necessary to cover the department's costs of administering the program and state outdoor recreation planning costs shall be divided into two shares for state and local entity grants with the local entity share being not less than 50 percent.

27.2(2) *Local share.* The local share of the annual L&WCF apportionment shall be available for local entity grants on an annual basis.

571—27.3(456A) Eligibility requirements. The following eligibility requirements shall apply to local entities:

27.3(1) Participation in the L&WCF shall be limited to county conservation boards and incorporated cities.

27.3(2) A local entity shall have assessed outdoor recreation supplies, demands and needs and shall have allowed for input by affected citizens within the service area of any proposed project and project applications shall include documentation of these planning processes.

571—27.4(456A) Assistance ceiling. Local entities are eligible to receive annual assistance from the L&WCF in accordance with the following schedule:

Population of Area of Jurisdiction	L&WCF
0- 1,000	$ 50,000
1,001- 5,000	75,000
5,001-10,000	100,000
10,001-25,000	125,000
25,001-50,000	150,000
50,001-75,000	175,000
over 75,000	200,000

Exceptions to the above limits: The maximum grant for local entities with populations in excess of 25,000 shall be $125,000 for any swimming pool or golf course project. The maximum grant limit for local entities with populations of up to and including 10,000 shall be $125,000 for any land acquisition project.

The assistance ceiling may be waived upon approval by the director under the following circumstances:

1. The project being proposed for L&WCF assistance is regional in nature or is expected to serve a minimum of 100,000 people.
2. The proposed project cannot be staged over a multiyear period so that a separate grant application might be submitted each year.

No grant shall be approved which exceeds the allotment for the review period.

571—27.5(456A) Grant application submission.

27.5(1) *Form of application.* Grant applications for both state and local projects shall be on forms and following guidelines provided by the department. Projects selected for funding with land and water conservation assistance must be in accordance with state comprehensive outdoor recreation plan priorities.

27.5(2) *Application timing.* The following information applies to local projects only. Grant applications and amendment requests which increase the existing grant amount shall be reviewed and selected for funding on an annual basis as provided in subrule 27.2(2). Annual reviews shall be held in April. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, by the close of business on the work day closest to the fifteenth day of the month preceding each review month.

27.5(3) *Local funding.* An applicant shall certify that it has committed its share of project costs. Cash donations must be on deposit and a bond issue must have been passed by the electorate if such passage is necessary if either or both is a source of local funding.

27.5(4) *Development project application.* An application for a development project grant shall include development on only one project site or area with the exception that an application may include development of a like nature only on several sites (e.g., tennis courts).

27.5(5) *Application timing.* The following applies only to state projects. Grant applications and amendments to existing approved projects which exceed 10 percent of the original grant amount will be reviewed, evaluated and submitted to the National Park Service for approval as soon as practicable upon notification of Iowa's apportionment.

27.5(6) *Application acceptance.* Applications for state projects will be accepted from the Iowa department of natural resources and any other state agency which submits an eligible project application.

571—27.12(456A) Project period. A project period which is commensurate with the work to be accomplished will be assigned to each project. Project period extensions will be granted only in a case of extenuating circumstances.

571—27.13(456A) Reimbursements.

27.13(1) *Grant amount.* Grant recipients will be reimbursed 50 percent of all eligible costs incurred on a project up to the amount of the grant.

27.13(2) *Project billings.* Grant recipients shall submit billings for reimbursements on forms provided by the department.

27.13(3) *Project billing frequency.* Project billings for development shall be submitted on the following basis:

a. Up to $10,000 total project cost—one billing.

b. Up to $50,000 total project cost—no more than two billings.

c. Up to $150,000 total project cost—no more than three billings.

d. Over $150,000 total project cost—no more than four billings.

e. Each billing shall include all expenditures for every item included therein which has a total cost of $25,000 or less (i.e., 100 percent item completion).

27.13(4) *Final project billing.* A final project billing shall be submitted within 90 days following the end of a project period. Failure to do so may be cause for termination of the project with no further reimbursement to the grant recipient.

27.13(5) *Documentation.* Grant recipients shall provide documentation as required by the department to substantiate all costs incurred on a project.

27.13(6) *Reimbursement withheld.* Ten percent of the total reimbursement due any grant recipient for a development project will be withheld pending a final site inspection or until any irregularities discovered as a result of a final inspection have been resolved.

571—27.14(456A) Ineligible items. The following items are ineligible for assistance from the L&WCF:

27.14(1) Donated labor, materials, and equipment use.

27.14(2) Force account labor and equipment use. (A grant recipient's own personnel and equipment.)

27.14(3) Donated real property.

571—27.15(456A) Record keeping and retention. A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the department, the state auditor's office and the U.S. Department of the Interior.

These rules are intended to implement Iowa Code sections 456A.27 to 456A.35.

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IOWA EMERGENCY RESPONSE COMMISSION

CHAPTER 100
MISSION OF COMMISSION

[Prior to 7/29/87, Natural Resources Department(561) Ch 100]
[Prior to 2/7/90, Public Defense Department(650) Ch 100]
[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

605—100.1(30) Mission. The Iowa emergency response commission (IERC) was created to implement Emergency Planning and Community Right-to-Know Act (EPCRA).

The governor appoints one member each to represent department of agriculture and land stewardship, department of employment services, department of justice, department of natural resources, department of public defense, department of public health, department of public safety, state department of transportation, fire service institute of Iowa State University of science and technology and the office of the governor and two members from private industry.

The IERC shall enter into agreements with the department of employment services, the department of natural resources and the department of public defense to carry out those duties allocated to those departments under Iowa Code chapter 30.

This rule is intended to implement Iowa Code chapter 30 and 1992 Iowa Acts, chapter 1139.

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CHAPTER 101
OPERATIONS OF COMMISSION

[Prior to 7/29/87, Natural Resources Department (561) Ch 101]
[Prior to 2/7/90, Public Defense Department(650) Ch 101]
[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

605—101.1(17A) Scope. This chapter governs the conduct of business by the Iowa emergency response commission (IERC).

605—101.2(30) Membership. The Iowa emergency response commission is composed of 15 members appointed by the governor.

101.2(1) *Voting members.* Members representing the departments of workforce development, natural resources, public defense, public safety, and transportation, and one of the private industry representatives, who is designated by the commission at the first meeting of the commission each year, serve as voting members of the commission.

101.2(2) *Nonvoting members.* The remaining members of the commission, representing the department of agriculture and land stewardship, the department of justice, the department of public health, the state fire service emergency response council, a local emergency planning committee, the Iowa hazardous materials task force, the office of the governor, and two members representing private industry serve as nonvoting, advisory members of the commission. Nonvoting members may fully participate in discussion of matters before the commission, serve on committees formed by the commission and serve as officers of the commission.

605—101.3(17A,21,30) Time of meetings. The IERC shall meet at least semiannually, at the call of the chairperson, or upon written request of a majority of the members of IERC. The chairperson shall establish the date of all other meetings, and provide notice of all meeting dates, locations, and agenda.

101.3(1) *Call of the chairperson.* The chairperson shall notify the IERC of the date, time, and location of all meetings and state the agenda.

101.3(2) *Request of the IERC.* The chairperson shall schedule a meeting upon the receipt of a written request from a majority of the members of the IERC. The request shall state the reason for the meeting and the proposed agenda.

605—101.4(17A,21,30) Place of meetings. Meetings will generally be held in Des Moines, Iowa. The IERC may meet at other locations. The meeting place and time will be specified in the agenda.

605—101.5(17A,21,30) Notification of meetings.

101.5(1) *Form of notice.* Notice of meetings is given by posting and distributing the agenda. The agenda lists the time, date, place, and topics to be discussed at the meeting.

101.5(2) *Posting of agenda.* The agenda for each meeting will be posted at the office of the chairperson and in the office of the department of public defense, emergency management division.

101.5(3) *Distribution of agenda.* Agenda will be mailed to anyone who files a request with the chairperson. The request should state whether the agenda for a particular meeting is desired, or whether the agendas for all meetings are desired.

101.5(4) *Amendment to agenda.* Any amendments to the agenda after posting and distribution under subrules 101.5(2) and 101.5(3) will be posted, but not distributed. The amended agenda will be posted at least 24 hours prior to the meetings unless, for good cause, notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

101.5(5) *Supporting material.* Written materials provided to the IERC with the agenda may be examined and copied. Copies of the materials may be distributed at the discretion of the chairperson to persons requesting the materials. The chairperson may require a fee to cover the reasonable cost to the agency to provide the copies.

605—101.6(17A,21,30) Attendance and participation by the public.

101.6(1) *Attendance.* All meetings are open to the public. The IERC may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

101.6(2) *Participation.*

a. Items on agenda. Persons who wish to address the IERC on a matter on the agenda should notify the chairperson at least three days before the meeting. Presentations to the IERC may be made at the discretion of the chairperson.

b. Items not on agenda. Iowa Code section 21.4 requires a commission to give notice of its proposed agenda. Therefore, the IERC discourages persons from raising matters not on the agenda. Persons who wish to address the IERC on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

101.6(3) *Coverage by press.* Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

605—101.7(17A,21,30) Quorum and voting requirements.

101.7(1) *Quorum.* Four of the six voting members of the commission constitute a quorum.

101.7(2) *Majority voting.* All votes shall be determined by a majority of voting members present at a meeting of the commission. A quorum of the commission must be present at the time any vote is taken by the commission.

101.7(3) *Voting procedures.* The chairperson shall rule as to whether the vote will be by voice vote or roll call. A roll call vote shall be taken anytime a voice vote is not unanimous. Minutes of the commission shall indicate the vote of each member.

605—101.8(17A,21,30) Minutes, transcripts and recording of meetings.

101.8(1) *Recordings.* The chairperson shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

101.8(2) *Transcripts.* Transcripts of meetings will not routinely be prepared. The chairperson will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

101.8(3) *Minutes.* The chairperson shall record minutes of each meeting. Minutes shall be reviewed, approved, and maintained by the IERC. The approved minutes shall be signed by the chairperson.

605—101.9(17A,21,30) Officers and election.

101.9(1) *Officers.* The officers of the IERC are the chairperson and vice chairperson.

101.9(2) *Elections.* Election of officers shall take place at the first commission meeting held each calendar year. If an officer does not serve out the elected term, a special election shall be held at the first meeting held after notice is provided to the commission to elect a member to serve out the remainder of the term.

These rules are intended to implement Iowa Code chapter 30 as amended by 2000 Iowa Acts, chapter 1020, section 7, and chapter 1232, section 45.

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CHAPTER 102
EMERGENCY PLANNING DISTRICTS

[Prior to 2/7/90, Public Defense Department(650) Ch 102]
[Prior to 12/23/92, Disaster Services Division(607) Ch 101]

605—102.1(30) Requirement to designate, and organization of, emergency planning districts. The Iowa emergency response commission (IERC) is required to designate emergency planning districts. A local emergency planning committee is appointed by the IERC for each emergency planning district. The local emergency planning committee shall be responsible for the implementation of Emergency Planning and Community Right-to-Know Act (EPCRA) activities in each of the emergency planning districts including facilitating preparation and implementation of emergency planning for the emergency planning district.

605—102.2(30) Emergency planning districts—counties. Each of the presently existing 99 Iowa counties is designated as the geographic boundaries for an emergency planning district.

605—102.3(30) Application to modify districts. Two or more local emergency planning committees with commonality of interests may petition the IERC to amend, modify, or combine their districts. Petitions shall specify the geographical district requested, the reasons for the change, the benefit to the public by the designation of the proposed geographical district, and the proposed date for the change in designation.

These rules are intended to implement Iowa Code chapter 30 and 1992 Iowa Acts, chapter 1139.

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CHAPTER 103
LOCAL EMERGENCY PLANNING COMMITTEES

[Prior to 2/7/90, Public Defense Department(650) Ch 103]
[Prior to 12/23/92, Disaster Services Division(607) Ch 103]

605—103.1(30) Requirement to appoint local emergency planning committees (LEPC).

103.1(1) *Purpose.* The Iowa emergency response commission (IERC) is required to appoint members to local emergency planning committees. An LEPC is appointed for each of the emergency planning districts established in 607—Chapter 102.

103.1(2) *Representation.* As a minimum, each LEPC should be comprised of a representative from each of the following groups or organizations:

a. Elected state and local officials,
b. Law enforcement personnel,
c. Civil defense personnel,
d. Firefighting personnel,
e. First-aid personnel,
f. Health personnel,
g. Local environmental personnel,
h. Hospital personnel,
i. Transportation personnel,
j. Broadcast and print media,
k. Community groups, and
l. Owners and operators of facilities subject to the requirements of EPCRA.

A person may represent one or more of the disciplines listed, provided they are duly appointed by each group or organization to be represented.

605—103.2(30) Committee members.

103.2(1) *Appointment of local emergency planning committees.* Nominations to the LEPC shall be made by the county emergency management commission, established under Iowa Code section 29C.9, and shall be subject to review and appointment by the IERC. To the extent possible, membership of the LEPC shall be composed of members of the county emergency management commission. Vacancies on the LEPC shall be filled in accordance with this subrule.

103.2(2) *Meeting participation.* Any member of the county emergency management commission may participate in any meeting of the LEPC. If the county emergency management commission member is not the appointed representative of one of the groups or organizations specified in subrule 103.1(2), the county emergency management commission member shall not be eligible to vote on any issue before the LEPC.

103.2(3) *Member changes.* The IERC may revise the appointments made as it deems appropriate. Interested persons may petition the IERC to modify the membership of an LEPC.

605—103.3(30) Local emergency planning committee (LEPC) duties.

103.3(1) The LEPC shall establish procedures for the functioning of the committee to include:

a. The length of terms of the LEPC members and the selection of a chair and vice-chair;

b. The public notification of committee activity (42 U.S.C. 11001(c));

c. The conduct of public meetings to discuss the emergency plan (Iowa Code chapter 21, 42 U.S.C. 11001(c)); and

d. The procedures for receiving and responding to public comments; and the distribution of emergency plans. (42 U.S.C. 11001(c))

103.3(2) The LEPC shall establish procedures for receiving and processing requests from the public for information under EPCRA Section 324, including Form Tier Two information under EPCRA Section 312. (42 U.S.C. 11001(c))

103.3(3) The LEPC shall designate a 24-hour emergency contact point(s) for the immediate receipt of chemical release notifications. (42 U.S.C. 11003(c)(3))

103.3(4) The LEPC shall designate an official to respond to requests for information from the public for material safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms. The information, including minutes of the LEPC and related committee actions shall be available to the public during normal working hours at a location designated by the LEPC. (42 U.S.C. 11044(a))

103.3(5) The LEPC shall prepare an emergency plan for the district and shall review and revise as necessary the emergency plan at least annually. Both the initial emergency plan and any updates or revisions shall be submitted by the LEPC to the IERC in accordance with subrule 103.4(2). (42 U.S.C. 11003(a), 42 U.S.C. 11003(e))

103.3(6) The LEPC shall evaluate the need for resources in the district necessary to develop, implement, and exercise the emergency plan(s) and make recommendations. (42 U.S.C. 11003(b))

103.3(7) The LEPC shall maintain a current listing of the emergency coordinators designated by each covered facility. (42 U.S.C. 11003(d)(1))

103.3(8) The LEPC shall receive, review and act upon information updates from covered facilities regarding emergency planning.

103.3(9) The LEPC shall annually publish notice that emergency response plan, material safety data sheets, and inventory forms have been submitted and how the public can obtain access to the material for review. (42 U.S.C. 11044(b))

605—103.4(30) Emergency response plan development. The IERC recognizes that emergency planning includes more than chemical release planning. The chemical release planning required by this chapter and EPCRA shall be included in the comprehensive emergency planning conducted by the county emergency management commission as required by Iowa Code chapter 29C and planning standards of the Iowa division of emergency management.

605—103.5(30) Local emergency planning committee office. The LEPC shall designate a local government office that will serve as the focal point for receiving nonemergency notifications from facilities that are subject to the law. This office shall also be the depository for material safety data sheets, chemical lists, chemical inventory forms, emergency response plans, and toxic chemical releases forms and a point of contact for the public regarding community right-to-know inquiries, and the office of record for minutes of the LEPC meetings and related committee actions.

605—103.6(30) Local emergency response committee meetings. The LEPC shall meet as frequently as deemed necessary by the chair until the local emergency operations plan is developed and concurred by the joint administration and reviewed by the IERC. Subsequent to plan approval, the LEPC is required to meet at least annually to review emergency response procedures, emergency plans and ensure the actions required are properly administered within the local emergency planning district.

605—103.7(30) Local emergency response plan submission. After completion of the initial emergency response plan and any subsequent revisions thereto, the LEPC shall submit a copy to the IERC. The IERC shall review the submission and make recommendations to the LEPC on appropriate revisions that may be necessary to comply with provisions in 42 U.S.C. 11003(c) and state planning standards in 607—Chapter 6 to ensure coordination with emergency response plans of other emergency planning districts, the state of Iowa, and adjacent states. To the maximum extent practicable, the review shall not delay implementation of the plan or revisions thereto. All plans shall be submitted annually by October 17.

These rules are intended to implement Iowa Code chapter 30 and 1992 Iowa Acts, chapter 1139.

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CHAPTER 90
IOWA CHILD DEATH REVIEW TEAM

641—90.1(135) Purpose. The purpose of the child death review team is to aid in the reduction of the incidence of serious injury and death to children by accurately identifying the cause and manner of child death for children under age 18.

641—90.2(135) Definitions.

"Team" means the Iowa child death review team.

"Unexcused absence" means failure by a team member to notify the chairperson of an anticipated absence from a team meeting.

641—90.3(135) Agency. The Iowa child death review team is established as an independent agency of state government. The Iowa department of public health shall provide staffing and administrative support to the team.

641—90.4(135) Membership. The membership of the review team is subject to the provisions of Iowa Code sections 69.16 and 69.16A, relating to political affiliation and gender balance. Review team members who are not designated by another appointing authority shall be appointed by the director of public health in consultation with the director of human services. Membership terms shall be for three years.

90.4(1) The review team shall include the following:

a. The state medical examiner or the state medical examiner's designee.

b. A certified or licensed professional who is knowledgeable concerning sudden infant death syndrome.

c. A pediatrician who is knowledgeable concerning deaths of children.

d. A family practice physician who is knowledgeable concerning deaths of children.

e. One mental health professional who is knowledgeable concerning deaths of children.

f. One social worker who is knowledgeable concerning deaths of children.

g. A certified or licensed professional who is knowledgeable concerning domestic violence.

h. A professional who is knowledgeable concerning substance abuse.

i. A local law enforcement official.

j. A county attorney.

k. An emergency room nurse who is knowledgeable concerning the deaths of children.

l. A perinatal expert.

m. A representative of the health insurance industry.

n. One other appointed at large.

90.4(2) Vacancies shall be filled in the same manner in which the original appointments were made. An appointment shall complete the original member's term.

90.4(3) Three consecutive unexcused absences shall be grounds for the director to consider dismissal of the team member and to appoint another. The chairperson of the team is charged with providing notification of absences.

641—90.5(135) Officers. Officers of the team shall be a chairperson and a vice chairperson and shall be elected at the first meeting of each fiscal year unless designated at the time of appointment. Vacancy in the office of chairperson shall be filled by elevation of the vice chairperson. Vacancy in the office of vice chairperson shall be filled by election at the next meeting after the vacancy occurs. The chairperson shall preside at all meetings of the team, appoint such subcommittees as deemed necessary, and designate the chairperson of each subcommittee. If the chairperson is absent or unable to act, the vice chairperson shall perform the duties of the chairperson. When so acting, the vice chairperson shall have all the powers of and be subject to all restrictions upon the chairperson. The vice chairperson shall also perform such other duties as may be assigned by the chairperson.

641—90.6(135) Meetings. The team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by the team. Robert's Rules of Order shall govern all meetings.

641—90.7(135) Expenses of team members. The members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.

641—90.8(135) Team responsibilities. The team shall perform the following responsibilities.

1. Collect, review, and analyze child death certificates and child death data, including patient records or other pertinent confidential information concerning deaths of children aged six or younger, and other information as the review team deems appropriate for use in preparing an annual report to the governor and the general assembly concerning the causes and manner of child deaths. The report shall include analysis of factual information obtained through review and recommendations regarding prevention of child deaths.
2. Recommend to the governor and the general assembly interventions to prevent deaths of children based on an analysis of the cause and manner of such deaths.
3. Recommend to the agencies represented on the review team and to other agencies changes which may prevent child deaths.
4. Maintain the confidentiality of any patient records or other confidential information reviewed.
5. Develop protocols for and establish a committee to review child abuse investigations which involve the death of a child.
6. The team may establish subcommittees to which the team may delegate some or all of the team's responsibilities set out in this rule.

641—90.9(135) Liaisons. The following individuals shall each designate a liaison to assist the team in fulfilling its responsibilities.

1. Director of public health.
2. Director of human services.
3. Commissioner of public safety.
4. Administrator of the bureau of vital records of the Iowa department of public health.
5. Attorney general.
6. Director of transportation.
7. Director of the department of education.

641—90.10(135) Confidentiality and disclosure of information. The team and liaisons shall maintain the confidentiality of all information and records used in the review and analysis of child deaths, including disclosure of information which is confidential under Iowa Code chapter 22 or any other provisions of state law. No information on individual deaths contained in the records described in this rule shall be disclosed except for the purposes of the team, committee or subcommittee meeting, and no confidential information received in preparation for or during the course of such meeting shall be removed from the meeting room except for further review as authorized by the team chairperson.

In preparation for review of an individual death by the team or its authorized committee or subcommittee, the chairperson of the team or the chairperson's designee is authorized to gather all information pertinent to the review. This information may include, but is not limited to, hospital records, physician's records, school records, day-care records, autopsy records, child abuse registry, investigation or assessment records, state public assistance records, traffic records, public safety records, law enforcement records, fire marshal's records, birth records, death records, and other relevant records necessary to conduct a complete review.

A person in possession or control of medical, investigative or other information pertaining to a child death and child abuse review shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and for the duties of the Iowa child death review team. Information and records which are confidential under Iowa Code section 22.7 and chapter 235A, and information or records received from the confidential records, remain confidential under this rule. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this rule.

641—90.11(135) Immunity and liability. Review team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a review team member or agent provided that the review team members or agents acted in good faith and without malice in carrying out their official duties in their official capacity. A complainant bears the burden of proof in establishing malice or lack of good faith in an action brought against review team members involving the performance of their duties and powers.

A person who releases or discloses confidential data, records, or any other type of information in violation of this chapter is guilty of a serious misdemeanor.

These rules are intended to implement Iowa Code Supplement section 135.43.

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CHAPTER 40
CHIROPRACTIC EXAMINERS

[Prior to 7/29/87, Health Department[470] Ch 141]

GENERAL

645—40.1(151) Definitions. The following definitions shall be applicable to the rules of the Iowa board of chiropractic examiners:

"Active licensee" means any person licensed to practice chiropractic in Iowa who has met all conditions of license renewal and maintains a current license to practice in this state.

"Adjustment/manipulation of neuromusculoskeletal structures" means use by a doctor of chiropractic of a skillful treatment based upon differential diagnosis of neuromusculoskeletal structures and procedures related thereto by the use of passive movements with the chiropractic physician's hands or instruments in a manipulation of a joint by thrust so the patient's volitional resistance cannot prevent the motion. The manipulation is directed toward the goal of restoring joints to their proper physiological relationship of motion and related function. Movement of the joint is by force beyond its active limit of motion, but within physiologic integrity. Adjustment or manipulation commences where mobilization ends and specifically begins when the elastic barrier of resistance is encountered by the doctor of chiropractic and ends at the limit of anatomical integrity. Adjustment or manipulation as described in this definition is directed to the goal of the restoration of joints to their proper physiological relationship of motion and related function, release of adhesions or stimulation of joint receptors. Adjustment or manipulation as described in this definition is by hand or instrument. The primary emphasis of this adjustment or manipulation is upon specific joint element adjustment or manipulation and treatment of the articulation and adjacent tissues of the neuromusculoskeletal structures of the body and nervous system, using one or more of the following:

1. Impulse adjusting or the use of sudden, high velocity, short amplitude thrust of a nature that patient volitional resistance is overcome, commencing where the motion encounters the elastic barrier of resistance and ends at the limit of anatomical integrity.
2. Instrument adjusting, utilizing instruments specifically designed to deliver sudden, high velocity, short amplitude thrust.
3. Light force adjusting, utilizing sustained joint traction or applied directional pressure, or both, which may be combined with passive motion to restore joint mobility.
4. Long distance lever adjusting, utilizing forces delivered at some distance from the dysfunctional site and aimed at transmission through connected structures to accomplish joint mobility.

"Anatomic barrier" means the limit of motion imposed by anatomic structure; the limit of passive motion.

"Board" shall mean the board of chiropractic examiners of the state of Iowa.

"C.C.E. (Council on Chiropractic Education)" shall mean the Educational Standards of Chiropractic Colleges and bylaws which are on file in the office, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, and in accordance with 17A.6(3), a copy may be obtained for the actual cost of reproduction.

"Chiropractic intern" means a chiropractic student of an approved college of chiropractic in the student's last academic quarter, semester, or trimester of study, who is eligible for graduation from the college of chiropractic except for completion of a preceptorship program.

"Chiropractic manipulation" means care of an articular dysfunction or neuromusculoskeletal disorder by manual or mechanical adjustment of any skeletal articulation and contiguous articulations.

"Chiropractic practice Acts" shall mean Iowa Code chapter 151 and those provisions of the Iowa Code which incorporate by explicit reference to the practice of chiropractic.

"Chiropractic preceptor" means a chiropractic physician licensed and practicing in Iowa pursuant to Iowa Code chapter 151, who accepts a chiropractic student into the practice for the purpose of providing the chiropractic student with a clinical experience of the practice of chiropractic.

"Chiropractic resident" means a graduate chiropractic physician who has received a doctor of chiropractic degree from a college of chiropractic approved by the board.

"Chiropractic student" means a student of an approved college of chiropractic.

"Department" shall mean the Iowa department of public health.

"Differential diagnosis" means to examine the body systems and structures of a human subject to determine the source, nature, kind or extent of a disease, vertebral subluxation, neuromusculoskeletal disorder or other physical condition, and to make a determination of the source, nature, kind, or extent of a disease or other physical condition.

"Director" shall mean the director of public health.

"Disciplinary proceeding" shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

"Elastic barrier" means the range between the physiologic and anatomic barrier of motion in which passive ligamentous stretching occurs before tissue disruption.

"Extremity manipulation" means a corrective thrust or maneuver by a doctor of chiropractic by hand or instrument based upon differential diagnosis of neuromusculoskeletal structures applied to a joint of the appendicular skeleton.

"License" means license to practice.

"Licensee" shall mean a person licensed to practice chiropractic.

"Licensee discipline" or *"discipline"* shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies persons of this state a high standard of professional care.

"Malpractice" shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a chiropractic physician in the practice of the profession.

"Mobilization" means movement applied singularly or repetitively within or at the physiological range of joint motion, without imparting a thrust or impulse, with the goal of restoring joint mobility.

"Order" shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

"Peer review" shall mean evaluation of professional services rendered by a professional practitioner.

"Peer review committee" shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

"Physiologic barrier" means the limit of active motion, which can be altered to increase range of active motion by warm-up activity.

"Preceptorship practice" means the chiropractic practice of a single chiropractic physician or group of chiropractic physicians in a particular business or clinic, into which a licensed practicing chiropractic physician has accepted a chiropractic intern for the limited purpose of providing the chiropractic intern with a clinical experience in the practice of chiropractic.

"Profession" shall mean chiropractic.

"Respondent" shall mean any individual(s) who shall be charged in a complaint with a violation of professional ethics or practice or both.

"Rule" shall mean a requirement, procedure, or standard of general applicability prescribed by the board relating to either the administration or enforcement of the chiropractic profession.

645—40.2(151) Description of board. The purpose of the board of chiropractic examiners is to administer, interpret and enforce the provisions of Iowa Code chapter 151 and those other provisions of the Iowa Code which incorporate by explicit or implicit reference the practice of chiropractic. These powers include but are not limited to the examination of candidates, determining the eligibility of candidates for licensure by examination and endorsement, investigating violations and infractions of the laws relating to the practice of chiropractic, and revoking, suspending or otherwise disciplining a chiropractic physician who has violated the provisions of the chiropractic practice Acts.

645—40.3(151) Organization of board. The board is comprised of five members licensed to practice chiropractic and two representatives of the general public. The members are appointed by the governor and confirmed by the senate. The term of office is for three years. The board:

40.3(1) Is a policymaking body relative to matters involving chiropractic education and licensure, postgraduate training and discipline.

40.3(2) Conducts business according to established policy as approved by the members.

40.3(3) Organizes annually and elects a chairperson, vice chairperson, superintendent of examinations, and a secretary from its membership.

a. *"Chairperson"* shall preside at all meetings of the board. Shall have power to vote. Shall appoint committees when necessary to study issues, and shall follow Robert's Rules of Order.

b. *"Vice chairperson"* shall act in the capacity of chairperson in the absence of that officer.

c. *"Secretary"* shall keep an accurate and complete record of all transactions of the board. Copies of all such records will become public record and will be on file in the board office, Lucas State Office Building, Des Moines, Iowa 50319-0075 or its designated office.

d. *"Superintendent of examinations"* shall supervise the examination and make arrangements for the holding of the examinations in a proper manner.

40.3(4) Governs its proceedings by Robert's Rules of Order, Revised.

40.3(5) Receive the administrative and clerical support of a board administrator, hired by the department, who:

a. Is not a member of the board.

b. Under guidance of the members of the board performs administrative activities relating to the department in the administration and enforcement of the laws relative to the practice of chiropractic.

40.3(6) Has the statutory authority to:

a. Administer, interpret, and enforce the laws and administrative rules relating to the practice of chiropractic;

b. Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline;

c. Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted;

d. Initiate and prosecute disciplinary proceedings;

e. Impose licensee discipline;

f. Petition the district court for enforcement of its authority with respect to licensees or with respect to other persons violating the laws which the board is charged with administering;

g. Establish and register peer review committees;

h. Refer to a registered peer review committee for investigation, review, and report to the board, any complaint or other evidence of an act or omission which the board reasonably believes to constitute cause for licensee discipline.

However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction;

i. Determine and administer the annual renewal of licenses;

j. Establish and administer rules for continuing education requirements as a condition to license renewal.

645—40.4(151) Official communications. All official communications, including submissions and requests, should be addressed to the Board Administrator, Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—40.5(151) Office hours. The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week.

645—40.6(151) Meetings. Regular meetings of the board ordinarily are held at least quarterly. The board utilizes licensing examinations administered by the National Board of Chiropractic Examiners twice each year. At the discretion of the board, three-day licensing examinations may be administered by the board. These examinations may be in addition to national licensing examinations or in lieu of same. Information concerning the dates and locations for meetings and examinations may be obtained from the board's office.

645—40.7(151) Public meetings. All meetings of the board shall be open and public and all citizens of Iowa shall be permitted to attend any meeting, except as otherwise provided by statute.

40.7(1) The board may, by a vote of two-thirds of its members, hold a closed session for the following reasons:

a. To review or discuss records which are required or authorized by state or federal law to be kept confidential.

b. To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosures would be likely to prejudice or disadvantage the position of the board in that litigation.

c. To discuss the contents of a licensing examination.

d. To initiate licensee disciplinary investigations or proceedings.

e. To discuss the decision to be rendered in a contested case conducted according to the provisions of Iowa Code chapter 17A.

f. To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, which if disclosed would enable law violators to avoid detection.

g. To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

h. To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

40.7(2) Reserved.

645—40.8(151) Oral presentations. Prior to adoption, amendment, or repeal of any rule, the board shall give Notice of Intended Action by causing said notice to be published in the Iowa Administrative Bulletin. Written comments relating to the proposed action by the board may be submitted to the board at its official address no later than 20 days after the notice has been published.

The Administrative Rules Review Committee may, under the provisions of Iowa Code section 17A.8(6), on its own motion or on written request by any individual or group, review this proposed action at a regular or special meeting where the public or interested persons may be heard. An oral presentation shall be scheduled prior to the adoption, amendment or repeal of any rule(s) provided the request for presentation is in writing, received no later than 20 days after the notice has been published and the request for presentation is made by: 25 interested persons, a governmental subdivision, an agency, an association of 25 persons, or upon the discretion of the board.

40.8(1) The chairperson of the board or a presiding officer appointed by the board shall preside over the oral presentation.

a. The date, time and location of the oral presentation shall be set by the board. The appropriate individuals, governmental subdivisions, agencies or associations making the request shall be notified of said date, time and location of presentation by certified mail.

b. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the oral presentation has been scheduled. Any individual(s) desiring to make written comments shall submit these comments to the presiding officer prior to the presentation date. Any individual(s) desiring to make an oral presentation shall submit a written request to the board prior to the presentation date.

c. The authority of the chairperson of the board or presiding administrative law judge during the oral presentation includes:

(1) Setting a ten-minute time limit on oral presentations if necessary;

(2) Excluding any individual(s) who may be either disruptive or obstructive to the oral presentation; and

(3) Ruling that the oral presentation or discussion, or both, is not pertinent to the oral presentation.

d. The conduct of the chairperson of the board or presiding officer during the oral presentation shall include but need not be limited to:

(1) Open the oral presentation and receive appearances.

(2) Enter the oral presentation into the public record.

(3) Receive oral presentations.

(4) Read into the official public record written comments which have been submitted.

(5) Adjourn the oral presentation.

40.8(2) Reserved.

645—40.9(151) Rules pertaining to schools.

40.9(1) Rules pertaining to the practice of chiropractic at a chiropractic college clinic shall be equal to the standards established by the Council on Chiropractic Education existing as of February 1, 1991.

40.9(2) All chiropractic colleges in order to be approved by the board of chiropractic examiners shall first have status with the Commission on Accreditation of the Council on Chiropractic Education, as recognized by the U.S. Office of Education, existing as of February 1, 1991.

40.9(3) The following procedures are established for an institution to obtain equivalent approval by the board of examiners:

a. Standards. The standards against which the institution will be evaluated shall be those published and utilized by the Council on Chiropractic Education existing as of February 1, 1991.

b. Self-study. A comprehensive self-study shall be required of the applying institution which measures its performance against the objectives of the institution and the standards of the board of examiners. After review of the self-study the board shall render a decision that the self-study is either: (1) satisfactory, (2) unsatisfactory in terms of the report, or (3) unsatisfactory in terms of content. If unsatisfactory, the board will furnish the institution with a bill of particulars. An inspection of the institution shall not be made until the self-study is satisfactory.

c. Inspection. Inspection of the institution shall be conducted by an examining team selected by the board and shall consist of a minimum of five members. Two shall have doctorates in the basic sciences; one shall have a doctorate in college administration; and two shall be doctors of chiropractic.

(1) The inspection team shall determine firsthand if the applicant institution meets the established standards and is meeting its own institutional objectives.

(2) Expenses of the inspection team shall be borne by the applicant institution.

(3) The inspection team shall furnish the board with a comprehensive report of the team findings after having provided the institution with opportunity to comment on its findings.

d. Decision. The board of examiners will make its decision on the basis of the comprehensive report of the inspection team after providing the institution opportunity for a hearing on the report. If a member of the board has participated in the inspection, the member shall not participate in the decision-making process.

COLLEGES AND COLLEGE-BASED PROGRAMS

40.9(4) Students—treatment of patients.

a. Unlicensed practice by chiropractic interns and chiropractic residents. The board may approve the unlicensed practice of chiropractic in this state by a bona fide student of a chiropractic college which offers an approved preceptorship program, if the chiropractic college preceptorship program, the chiropractic preceptor and practice of chiropractic by the intern meet the criteria established by the Council on Chiropractic Education. The board may approve the unlicensed practice of chiropractic in this state by a chiropractic resident in an approved postgraduate chiropractic preceptorship program, if the postgraduate chiropractic preceptorship program, the chiropractic preceptor and the practice of chiropractic by the chiropractic resident meet the criteria established by the Council on Chiropractic Education.

b. Approved chiropractic college preceptorship programs. The board shall approve a chiropractic college preceptorship program which includes all of the following criteria:

(1) Is operated by a chiropractic college approved by the board. The board shall consider whether the college is accredited by the Council on Chiropractic Education, and shall also consider the degree of consumer protection provided by the defined standards and practices of the chiropractic college's preceptor program, as well as the degree of consumer protection demonstrated by the actual operation of the chiropractic college's preceptor program.

(2) Is an established component of the curriculum of the chiropractic college.

(3) Certifies to the board, on forms supplied by the school:

1. That all chiropractic interns who participate in the preceptorship program have met all requirements for graduation from the chiropractic college except for completion of the preceptorship period, and

2. That no chiropractic physician who is a preceptor shall supervise more than one chiropractic intern for the duration of a given preceptorship period.

(4) Certifies to the board on forms supplied by the school that all chiropractic physicians who participate as preceptors have been fully credentialed by the sponsoring chiropractic college.

(5) Certifies to the board on forms supplied by the school that the chiropractic preceptor and the chiropractic intern have agreed on the goals of the preceptor to be completed by the chiropractic intern.

(6) Upon request, provides a current list to the board of the chiropractic physicians in Iowa who are preceptors in the program.

c. Approved postgraduate preceptorship programs. The board shall approve a preceptorship program for the training of chiropractic residents which meets all of the following criteria:

(1) Is operated by a chiropractic college approved by the board. The board shall consider whether the college is accredited by the Council on Chiropractic Education, and shall also consider the degree of consumer protection provided by the defined standards and practices of the chiropractic college's preceptor program, as well as the degree of consumer protection demonstrated by the actual operation of the chiropractic college's preceptor program.

(2) Is an established postgraduate program of the chiropractic college.

(3) Certifies to the board, on forms supplied by the school:

1. That all chiropractic residents who participate in the postgraduate preceptorship program have graduated from a college of chiropractic approved by the board, and

2. That no chiropractic physician who is a preceptor shall supervise more than one chiropractic resident for the duration of a given preceptorship period.

(4) Certifies to the board on forms supplied by the school that all chiropractic physicians who participate as preceptors are fully credentialed in accordance with current guidelines for chiropractic preceptorship established by the Council on Chiropractic Education.

(5) Certifies to the board, on forms supplied by the college, that the chiropractic resident preceptor and the chiropractic resident have agreed on the goals of the preceptor program to be completed by the chiropractic resident.

(6) Upon request, provides to the board a current list of the chiropractic physicians in Iowa who are preceptors in the program.

d. Approved chiropractic preceptors. The board shall approve a chiropractic physician to be a chiropractic physician preceptor if the chiropractic physician meets all of the following conditions:

(1) Certifies to the board, on forms supplied by the school, that:

1. The chiropractic physician preceptor has been continuously licensed in the United States for the previous five years and currently holds a license in Iowa, that there are no pending disciplinary actions or malpractice awards granted against the chiropractic physician preceptor, and that there have been no board disciplinary actions taken within the last three years against the chiropractic physician preceptor.

2. The chiropractic physician preceptor is fully credentialed in accordance with current guidelines for chiropractic preceptorship established by the Council on Chiropractic Education.

3. The chiropractic physician preceptor is responsible for the practice of the chiropractic intern or chiropractic resident who is accepted into a preceptorship practice.

4. The chiropractic physician preceptor will identify the chiropractic intern or chiropractic resident to the patients of the preceptorship practice in such a way that no patient will tend to be misled as to the status of the chiropractic intern or chiropractic resident. The chiropractic intern or chiropractic resident will wear an identification badge at all times in the presence of preceptorship patients.

5. The chiropractic physician preceptor will supervise no more than one chiropractic intern or chiropractic resident for the duration of a given preceptorship period.

6. The chiropractic physician preceptor will exercise direct, on-premises supervision of the chiropractic intern or chiropractic resident at all times during which the chiropractic intern or chiropractic resident is engaged in any facet of patient care in the chiropractic physician preceptor's clinic.

e. Termination of preceptorship. A preceptorship shall terminate upon the occurrence of the earliest applicable of the following events.

(1) For a chiropractic intern participating in a preceptorship program, graduation from the college of chiropractic operating the program.

(2) For a chiropractic resident participating in a postgraduate preceptorship program, the passage of 12 months since graduation from a board-approved college of chiropractic.

(3) For either a chiropractic intern preceptorship or a chiropractic resident preceptorship, any of the following:

1. The filing of formal disciplinary decisions against a chiropractic preceptor, the nature of which is a criminal offense and the circumstances of which substantially relate to the practice of chiropractic.

2. The filing of formal disciplinary decisions against a chiropractic physician preceptor for violation of statutes or administrative rules pertaining to the practice of chiropractic.

3. The granting of a malpractice award against a chiropractic physician preceptor in a civil action for malpractice.

40.9(5) The student enrolled at an approved chiropractic college in the state of Iowa will be able to treat patients under the license of the clinic director or designated licensed doctor associated with the clinic of the college who must be a currently licensed Iowa chiropractic physician and the board so notified of the name of the doctor. The clinic will operate under the license of the clinic director or designated licensed doctor associated with the clinic.

645—40.10(151) General requirements.

40.10(1) Beginning July 1, 1982, the licensure period shall be from July 1 of the even-numbered year to June 30 of the subsequent even-numbered year.

40.10(2) The board shall assess a penalty equal to the renewal fee if more than 30 days have passed since the expiration date.

40.10(3) Any licensee who allows the license to lapse by failing to renew within one year of the expiration date shall be required to pay the penalty set forth in 40.10(2) and all past renewal fees then due provided the fees shall not exceed $500 as computed by the board and show evidence of 30 hours of accredited continuing education for each lapsed year, which constitutes an organized program of learning, and which contributes directly to the professional competency of the licensee. The hours need not exceed 90 hours for reinstatement, if obtained within the past two years, except when there is a demonstrated deficiency for specialized education as determined by the board through a personal interview with the applicant. A licensee may be reinstated without examination upon approval by the board.

40.10(4) The board may affiliate with the Federation of Chiropractic Licensing Boards.

40.10(5) Any official action or vote of the board taken by mail or by other means shall be preserved by the board administrator in the same manner as the minutes of the regular meetings.

40.10(6) Any legal proceedings where applicable shall be conducted in a manner as stipulated in Iowa Code chapters 17A, 147, 151.

40.10(7) Persons licensed to practice chiropractic shall keep their license publicly displayed in the primary place of practice. When a person licensed to practice chiropractic changes residence or place of practice, notification shall be sent to the Iowa Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319-0075.

40.10(8) Every license to practice chiropractic shall expire in multiyear intervals and be renewed as determined by the board upon application by the licensee, without exception. Application for renewal shall be made in writing to the board accompanied by the required fee at least 30 days prior to the expiration of such license. Every renewal shall be displayed in connection with the original license. The board shall notify each licensee by mail prior to the expiration of a license. Failure to renew the license within a reasonable time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board.

This rule is intended to implement Iowa Code sections 147.7, 147.9 and 147.10.

645—40.11(151) Rules for conducting examinations.

40.11(1) The applicant shall submit a completed application on a form prescribed by the board with required credentials and fee. The completed application must include the following:

a. A photostatic copy of chiropractic diploma (no larger than 8½ x 11 inches) from an approved college or a letter of graduation intent from a college registrar within 120 days of examination date. However, no license to practice will be issued until the board administrator has received a copy of the signed diploma.

b. Rescinded IAB 2/12/97, effective 3/19/97.

c. Official transcript of grades of the National Board of Chiropractic Examiners.

d. The applicant shall have received certification from the National Board of Chiropractic Examiners attesting to the successful completion of the required examination after July 1, 1973, or a basic science certificate issued prior to July 1, 1973.

(1) Effective August 1, 1976, all electives of the National Board examination are required.

(2) Effective January 1, 1987, Part III of the National Board examination is required.

(3) Effective January 1, 1996, Part IV of the National Board examination is required.

e. Each applicant shall submit three written character references on the application. The references shall not be from members of the chiropractic profession.

f. Each applicant must include a record of the number and date of chiropractic license obtained in other states, if any, the manner in which such license or licenses were obtained, and a statement as to whether or not any license so issued has ever been suspended or revoked.

g. Each application shall include a chronologic statement as to all the places where the candidate has practiced, if any, type of practice engaged in and the period of time so engaged.

h. One passport-size photograph of the applicant taken within the previous six months.

i. A final transcript sent directly from a board-approved college of chiropractic.

40.11(2) Any candidate applying for licensure may be required to appear for a personal interview before the board or before a member thereof.

40.11(3) The board shall require written, oral or practical examinations of any applicant.

40.11(4) Any candidate who fails the examination may take a second examination at a regularly scheduled examination upon payment of the examination fee. The candidate shall be required to repeat the entire examination if a previous examination is failed. Additional repeats of the examination are permitted at the discretion of the board.

40.11(5) Examinations given by the board will be held at a location and time specified by the board.

40.11(6) All applicants matriculating after October 1, 1975, will be graduated from a college having status with the C.C.E. (Council on Chiropractic Education) as of the date of the applicant's graduation. (See 40.9(151).)

645—40.12(151) Licensure by reciprocity or endorsement.

40.12(1) Each applicant shall submit a completed application form accompanied by a fee of $100.

40.12(2) A license to practice chiropractic by reciprocity or by endorsement may be issued on the basis of an examination in substantially all of the subjects required by this board given by a state examining board having reciprocal or endorsement relations with the board, provided, however, that the applicant must comply with all other requirements for licensure by examination in this state.

40.12(3) If any state with which this state has reciprocal or endorsement relations places any limitations or restrictions upon licentiates of this state, the same limitations or restrictions may be imposed upon licentiates of such state applying for admission to practice in this state on the basis of reciprocity or endorsement.

40.12(4) The statement made in the application must be reviewed and verified by the state examining board issuing the original license, certifying under seal as to the subjects in which the applicant was examined, the grade obtained in each subject and the general average attained in the entire examination.

40.12(5) In all cases the board reserves the right to review the examination papers and grades upon which reciprocal or endorsement certification may be granted before accepting the same.

40.12(6) No reciprocal license or license by endorsement shall be issued except on the basis of a license received by examination. The applicant must have had two years of full-time practice before applying for license by reciprocity or endorsement.

40.12(7) Rescinded IAB 8/19/92, effective 9/23/92.

40.12(8) Rescinded IAB 8/19/92, effective 9/23/92.

40.12(9) The chiropractic examiners may require written, oral or a practical examination of any applicant for licensure by reciprocity or endorsement.

645—40.13(151) License renewal date. A license to practice chiropractic shall expire on the thirtieth of June of every even-numbered year.

645—40.14(151) License-examination-renewal fees. The following fees shall be collected by the board:

40.14(1) For the basic application fee required of all applicants, $50. For a license to practice chiropractic, issued upon the basis of examination given by the chiropractic examiners, $225.

40.14(2) For the biennial renewal fee of a license to practice chiropractic, $100. Renewal fees shall be received by the board before the end of the last month of the renewal period.

40.14(3) For a certified statement that a licensee is licensed in this state, $10.

40.14(4) For a duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the Iowa department of public health has been destroyed or lost, or if necessary for display in additional place of practice, $10.

40.14(5) For a penalty fee for failure to complete required continuing education within the compliance period, $100.

40.14(6) For reinstatement of a lapsed or inactive license the fee is $50.

This rule is intended to implement Iowa Code section 147.80.

645—40.15(151) Specified forms to be used. All applications for examinations, certificates and licenses shall be on forms prescribed by the board. These forms may include, but not be limited to, the following, and where practicable, any one or more of the following forms may be consolidated into a single form.

Board Form:	Form Title:
1.	Application for a license to practice chiropractic on the basis of examination.
2.	Application for reinstatement of license to practice chiropractic.
3.	Application for renewal of a chiropractic license.
4.	Complaint form.
5.	Report of continuing chiropractic education.
6.	Certificate of exemption from continuing education requirements.
7.	Application for waiver of minimum education requirements due to disability or illness.

645—40.16(151) Temporary certificate.

40.16(1) The board may, in its discretion, issue a temporary certificate authorizing the applicant to practice chiropractic whenever, in the opinion of the board, a need exists and the applicant possesses the qualifications prescribed by the board for the certificate, which shall be substantially the same as those required under Iowa Code chapter 151. A temporary certificate shall be issued for one year and, at the discretion of the board, may be annually renewed, not to exceed two additional years, at a fee of $100 per year. The board may require completion of continuing education hours for renewal of a temporary certificate.

40.16(2) Each applicant shall:

a. Submit a completed application on a form prescribed by the board with required credentials and fee. The completed application must be on file at least 30 days prior to the date of the examination and must include the following:

(1) A photostatic copy of chiropractic diploma (no larger than 8½ x 11 inches) from an approved college or a letter of graduation intent from a college registrar within 120 days of examination date. However, no license to practice will be issued until the board administrator has received a copy of the signed diploma.

(2) A final transcript sent directly from a board-approved college of chiropractic.

(3) Official transcript of grades of the National Board of Chiropractic Examiners.

b. Submit documentation from the National Board of Chiropractic Examiners attesting to the successful completion of the required examination after July 1, 1973, or a basic science certificate issued prior to July 1, 1973.

(1) Effective August 1, 1976, all electives of the National Board examinations are required.

(2) Effective January 1, 1987, Part III of the National Board examinations is required.

(3) Effective January 1, 1996, Part IV of the National Board examinations is required.

c. Submit three written character references on the application form. The references shall not be from members of the chiropractic profession.

d. Include a record of the number and date of chiropractic license(s) obtained in other states, if any, the manner in which such license or licenses were obtained, and a statement as to whether or not any license so issued has ever been suspended or revoked.

e. Include a chronological statement as to all the places where the candidate has practiced, if any, type of practice engaged in and the period of time so engaged.

f. Submit two copies of a passport-size photograph of the applicant taken within the previous six months.

40.16(3) Applicants may be required to satisfactorily complete a written, oral, or practical examination. In any case, the board may require the applicant to appear for a personal interview before the board or a member of the board.

40.16(4) The temporary certificate may be canceled at any time without a hearing for reasons deemed sufficient to the board. The certificate may be canceled:

a. For any of the grounds for which licensee discipline may be imposed.

b. If the temporary certificate holder applies for a permanent license, is examined, and fails the examination.

Cancellation will be effective three days after mailing the notice of cancellation by registered mail.

This rule is intended to implement Iowa Code section 151.12.

645—40.17(514F) Utilization and cost control review.

40.17(1) The board shall establish U.C.C.R. (Utilization and Cost Control Review) committee(s). The name(s) of the committee(s) shall be on file with the board and available to the public. The designation of the committee(s) shall be reviewed annually.

40.17(2) Members of the U.C.C.R. committee shall:

a. Hold a current license.

b. Have practiced chiropractic in the state of Iowa for a minimum of five years prior to appointment.

c. Be actively involved in a chiropractic practice during the term of appointment as a U.C.C.R. committee member.

d. Have no pending board disciplinary actions or discipline taken during the three years prior to appointment and no discipline pending or taken during the period of appointment.

e. Have no malpractice awards granted against the appointed committee member during the three years prior to appointment or during the period of appointment.

f. Not assist in the review or adjudication of claims in which the committee member may reasonably be presumed to have a conflict of interest.

g. Have completed a utilization review course that has been previously approved by the board.

40.17(3) Procedures for utilization and cost control review. A request for review may be made to the board by any person governed by the various chapters of Title XX of the Code, self-insurers for health care benefits to employees, other third-party payers, chiropractic patients or licensees.

a. There shall be a reasonable fee, as established by the board, for services rendered, which will be made payable directly to the U.C.C.R. committee. The committee shall make a yearly accounting to the board.

b. A request for service shall be submitted to the executive director of the U.C.C.R. committee on an approved submission form and shall be accompanied by four copies of all information. All references to identification and location of patient and doctor shall be deleted and prepared for blind review by the executive director of the U.C.C.R. committee. The information shall be forwarded to the U.C.C.R. committee.

c. The U.C.C.R. committee shall respond in writing to the parties involved with its findings and recommendations within 90 days. The committee shall review the appropriateness of levels of treatment and give an opinion as to the reasonableness of charges for diagnostic or treatment services rendered as requested. The U.C.C.R. committee shall submit a quarterly report of their activities to the board. The U.C.C.R. committee shall meet at least annually with the board chair or the board chair's designee.

40.17(4) Types of cases reviewed shall include:

a. Utilization.

(1) Frequency of treatment,

(2) Amount of treatment,

(3) Necessity of service,

(4) Appropriateness of treatment.

b. Usual and customary service.

40.17(5) Criteria for review may include but are not limited to:

a. Was diagnosis compatible and consistent with information?

b. Were X-ray and other examination procedures adequate, or were they insufficient or nonrelated to history or diagnosis?

c. Were clinical records adequate, complete, and of sufficient frequency?

d. Was treatment consistent with diagnosis?

e. Was treatment program consistent with scientific knowledge and academic and clinical training in accredited chiropractic colleges?

f. Were charges reasonable and customary for the service?

40.17(6) Members of the U.C.C.R. committee shall observe the requirements of confidentiality imposed by Iowa Code chapter 272C.

40.17(7) Action of the U.C.C.R. committee does not constitute an action of the board.

This rule is intended to implement Iowa Code sections 514F.1 and 514F.2.

645—40.18(151) Acupuncture.

40.18(1) "Acupuncture" is the procedure of puncturing the skin with needles for treatment.

40.18(2) Rescinded IAB 8/19/92, effective 9/23/92.

40.18(3) Venipuncture for withdrawal of blood is not an acupuncture procedure.

645—40.19(151) Nonprofit nutritional product sales.

40.19(1) Profit shall mean all moneys remaining after the cost of operating a chiropractic practice.

40.19(2) The sale price of the nutritional product may not include a profit exceeding the cost of the practice overhead and the product.

645—40.20(151) Chiropractic insurance consultant.

40.20(1) Definition. The term *"chiropractic insurance consultant"* shall mean an Iowa-licensed chiropractic physician registered with the board who serves as a liaison and advisor to an insurance company and who advises said insurance company of: Iowa standards of recognized and accepted chiropractic services and procedures permitted by the Iowa Code and administrative rules; and advice on the propriety of chiropractic diagnosis and care.

40.20(2) Licensed chiropractic physicians shall not hold themselves out as chiropractic insurance consultants unless they meet the following requirements:

a. Hold a current license.

b. Practice chiropractic in the state of Iowa for a minimum of five years.

c. Be actively involved in a chiropractic practice during the term of appointment as a chiropractic insurance consultant.

This rule is intended to implement Iowa Code sections 151.1 and 151.11.

645—40.21(151) Adjunctive procedures.

40.21(1) Adjunctive procedures defined. Procedures related to differential diagnosis.

40.21(2) Any applicant for licensure to practice chiropractic in the state of Iowa who chooses to be tested in limited adjunctive procedures, those limited procedures must be adequate for the applicant to come to a differential diagnosis in order to pass the examination.

40.21(3) Applicants for licenses to practice chiropractic who refuse to utilize any of the adjunctive procedures which they have been taught in approved colleges of chiropractic must adequately show the examiners that they can come to an adequate differential diagnosis without the use of adjunctive procedures.

This rule is intended to implement Iowa Code sections 151.1 and 151.11.

645—40.22(151) Physical examination. The chiropractic physician is to perform physical examinations to determine human ailments, or the absence thereof, utilizing principles taught by chiropractic colleges. Physical examination procedures shall not include prescription drugs or operative surgery.

645—40.23(151) Gonad shielding. Gonad shielding of not less than 0.25 millimeter lead equivalent shall be used for chiropractic patients who have not passed the reproductive age during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

645—40.24(147,272C) Principles of chiropractic ethics. The following principles of chiropractic ethics are hereby adopted by the board relative to the practice of chiropractic in this state.

40.24(1) These principles are intended to aid chiropractic physicians individually and collectively in maintaining a high level of ethical conduct. These are standards by which a chiropractic physician may determine the propriety of the chiropractic physician's conduct in the chiropractic physician's relationship with patients, with colleagues, with members of allied professions, and with the public.

40.24(2) The principal objective of the chiropractic profession is to render service to humanity with full respect for the dignity of man. Chiropractic physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

40.24(3) Chiropractic physicians should strive continually to improve chiropractic knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

40.24(4) A chiropractic physician should practice a method of healing founded on a scientific basis, and should not voluntarily associate professionally with anyone who violates this principle.

40.24(5) The chiropractic profession should safeguard the public and itself against chiropractic physicians deficient in moral character or professional competence. Chiropractic physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

40.24(6) A chiropractic physician may choose whom to serve. In an emergency, however, services should be rendered to the best of the chiropractic physician's ability. Having undertaken the case of a patient, the chiropractic physician may not neglect the patient; and, unless the patient has been discharged, the chiropractic physician may discontinue services only after giving adequate notice.

40.24(7) A chiropractic physician should not dispose of services under terms or conditions which tend to interfere with or impair the free and complete exercise of professional judgment and skill or tend to cause a deterioration of the quality of chiropractic care.

40.24(8) A chiropractic physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of chiropractic service may be enhanced thereby.

40.24(9) A chiropractic physician may not reveal the confidences entrusted in the course of chiropractic attendance, or the deficiencies observed in the character of patients, unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

40.24(10) The honored ideals of the chiropractic profession imply that the responsibilities of the chiropractic physician extend not only to the individual, but also to society where these responsibilities deserve interest and participation in activities which have the purpose of improving both the health and well-being of the individual and the community.

645—40.25 to **40.35** Reserved.

645—40.36(151) Acupuncture. Renumbered as 645—40.18(151), IAB 12/27/00.

645—40.37(151) Nonprofit nutritional product sales. Renumbered as 645—40.19(151), IAB 12/27/00.

645—40.38(151) Chiropractic insurance consultant. Renumbered as 645—40.20(151), IAB 12/27/00.

645—40.39(151) Adjunctive procedures. Renumbered as 645—40.21(151), IAB 12/27/00.

645—40.40(151) Physical examination. Renumbered as 645—40.22(151), IAB 12/27/00.

645—40.41(151) Gonad shielding. Renumbered as 645—40.23(151), IAB 12/27/00.

645—40.42 to **40.50** Reserved.

645—40.51(147,272C) Principles of chiropractic ethics. Renumbered as 645—40.24(147,272C), IAB 12/27/00.

645—40.52(151,272C) Conduct of persons attending meetings. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.53 to **40.61** Reserved.

645—40.62(272C) Continuing education requirements. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.63(151) Standards for approval. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.64(151) Approval of sponsors, programs, and activities. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.65(272C) Hearings. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.66(272C) Reports and records. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.67(272C) Attendance record. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.68 Reserved.

645—40.69(272C) Exemptions for inactive practitioners. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.70(272C) Reinstatement of inactive practitioners. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.71(272C) Exemptions for active practitioners. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.72(272C) Physical disability, illness or exemption of continuing education. Rescinded IAB 12/27/00, effective 1/31/01.

645—40.73(272C) Reinstatement of lapsed license. Rescinded IAB 12/27/00, effective 1/31/01.

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CHAPTER 41
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 42
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTER 43
CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS

645—43.1(151) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of chiropractic examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means an organization, educational institution or person sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person shall be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Board" means the board of chiropractic examiners.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as a chiropractic physician in the state of Iowa.

645—43.2(272C) Continuing education requirements.

43.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of each even-numbered year two years later. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 60 hours of continuing education approved by the board.

43.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 60 hours of continuing education per biennium for each subsequent license renewal.

43.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

43.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

43.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—43.3(151) Standards for approval.

43.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program clock hours (One clock hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

43.3(2) *Specific criteria.* Continuing education hours of credit may be obtained by completing:

a. At least 36 hours of continuing education credit obtained from a board-approved program that relates to the clinical practice of chiropractic.

b. A minimum of two hours per biennium in professional boundaries regarding ethical issues related to professional conduct that may include but are not limited to sexual harassment, sensitivity training and ethics.

c. Classes on child abuse, dependent adult abuse, and OSHA training that meet the criteria in subrule 43.3(1). These classes are approved by the board and do not require prior approval or postapproval.

d. Teaching at a Council on Chiropractic Education (CCE) or board of chiropractic examiners-approved institution. Hours may be used only for the initial session and shall have prior board approval.

e. Electronically transmitted programs/activities or home study programs/activities that have a certificate of completion.

43.3(3) *Specific criteria for presenters and sponsors.*

a. All continuing education program sponsors must disclose in writing to participants the names of all instructors/presenters that are affiliated or employed by any entity selling or promoting products.

b. All instructors/presenters of a continuing education activity must include, as part of the continuing education activity, verbal and written statements to the participants regarding any affiliations or employment relationships with any entity promoting, developing or marketing products, services, procedures or treatment methods.

645—43.4(151) Approval of sponsors, programs, and activities for continuing education.

43.4(1) *Approval of sponsors.* An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction to be presented;

(3) Names and qualifications of instructors including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);
(2) Course title and presenter;
(3) Location;
(4) Number of clock hours attended and continuing education hours earned;
(5) Name of sponsor and sponsor number;
(6) Licensee's name; and
(7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following for a minimum of four years from the date of the continuing education activity:

(1) The continuing education activity;
(2) List of enrolled licensees' names and license numbers; and
(3) Number of continuing education clock hours.

e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:

(1) Date(s), location, course title(s) offered and outline of content;
(2) Total hours of instruction presented;
(3) Names and qualifications of instructors including résumés or vitae;
(4) A sample of the evaluation form(s); and
(5) A summary of the evaluations as completed by the licensees.

43.4(2) *Prior approval of programs/activities.* An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish approval of such activity prior to attendance shall apply to the board for approval on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. Requirements set forth in subrule 43.4(1) shall also apply to prior approval of programs/activities. The application shall state:

a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction; and
e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

43.4(3) *Review of programs.* Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

43.4(4) *Postapproval of activities.* A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction and credit hours requested;
e. Names and qualifications of speakers and other pertinent information;
f. Request for credit which includes a brief summary of the activity; and
g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of continuing education hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

43.4(5) *Voluntary relinquishment.* The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—43.5(272C) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education on a board-approved form.

43.5(1) The information on the form shall include:

a. Title of continuing education activity;
b. Date(s);
c. Sponsor of the activity;
d. Board-approved sponsor number;
e. Number of continuing education hours earned; and
f. Teaching method used.

43.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a certificate of attendance or verification for all reported activities that includes the following information:

(1) Date(s), location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;
(2) Number of clock hours for program attended; and
(3) Indication of successful completion of the course.

c. For auditing purposes, the licensee must retain the above information for four years.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—43.6(272C) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all past renewal fees not to exceed $500;
3. Pays a late fee equal to the renewal fee for one biennium;
4. Pays the reinstatement fee;
5. Has a personal interview with the board at the board's request; and
6. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 60 by the number of bienniums since the license lapsed to a maximum of three bienniums. Successful completion of the Special Purposes Examination Council (SPEC) examination may be required if the board finds reason to doubt the licensee's ability to practice with reasonable skill and safety.

645—43.7(272C) Continuing education waiver for active practitioners. A chiropractic physician licensed to practice as a chiropractic physician shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing chiropractic physician.

645—43.8(272C) Continuing education exemption for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

645—43.9(272C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—43.10(272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of chiropractic in the state of Iowa, satisfy the following requirements for reinstatement.

43.10(1) Submit written application for reinstatement to the board upon forms provided by the board;

43.10(2) Submit payment of the current renewal fee;

43.10(3) Submit payment of the reinstatement fee; and

43.10(4) Furnish in the application evidence of one of the following:

a. Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of approved continuing education hours substantially equivalent to that required under these rules computed by multiplying 60 by the number of bienniums a certificate of exemption shall have been in effect for the applicant to a maximum of three bienniums. Successful completion of the SPEC examination may be required by the board for reinstatement.

645—43.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 151.

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CHAPTER 44
DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

645—44.1(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed $1,000, when the board determines that a licensee is guilty of any of the following acts or offenses:

44.1(1) Fraud in procuring a license that includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice chiropractic and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the department of public health any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a license in this state.

44.1(2) Professional incompetence that includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the chiropractic physician's practice;

b. A substantial deviation by the chiropractic physician from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances;

c. A failure by a chiropractic physician to exercise in a substantial respect that degree of care which is ordinarily exercised by the average chiropractic physician in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of chiropractic in the state of Iowa;

e. Failure to maintain clinical and fiscal records in support of services rendered for a minimum of five years from one of the following dates as applicable. For the purposes of this rule, clinical records shall include all laboratory and diagnostic imaging studies.

(1) For an adult patient in an uncontested case, the last office visit;

(2) For a minor patient in an uncontested case, the last office visit plus the age of 18 years;

f. Failure to comply with the department of public health standards for radiation-emitting equipment as used by a chiropractic physician, set forth in Iowa Code chapter 136C.

44.1(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a chiropractic physician in the practice of chiropractic and includes any representation contrary to the chiropractic physician's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another. Activities under this paragraph include, but are not limited to:

(1) Alleging superiority in any way.

(2) Guarantees of any type.

(3) Improper titles.

(4) Inflated or unjustified expectations of favorable results.

(5) Self-laudatory claims of specialty practice for which credentials do not exist.

(6) Representations that patients easily misunderstand.

(7) Claims of extraordinary skills that are not recognized by the profession.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of chiropractic ethics and code of ethics as set out in rule 645—40.24(147,272C) as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a chiropractic physician to possess and exercise that degree of skill, learning and care expected of a reasonably prudent chiropractic physician acting in the same or similar circumstances in this state, or instances in which a chiropractic physician is unable to practice chiropractic with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

44.1(4) Habitual intoxication or addiction to the use of drugs that includes, but is not limited to, the inability of a chiropractic physician to practice chiropractic with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other types of material which may impair a chiropractic physician's ability to practice the profession with reasonable skill and safety.

44.1(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence that includes, but is not limited to, the conviction of a chiropractic physician who has committed a public offense in the practice of the profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of chiropractic, or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon the licensee as a chiropractic physician in this state.

44.1(6) Fraud in representations as to skill or ability that includes, but is not limited to, a chiropractic physician's having made misleading, deceptive or untrue representations as to the chiropractic physician's competency to perform professional services for which the chiropractic physician is not qualified to perform by training or experience.

44.1(7) Use of untruthful or improbable statements in advertisements that includes, but is not limited to, an action by a chiropractic physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results;

b. Self-laudatory claims that imply that the chiropractic physician is a skilled chiropractic physician engaged in a field or specialty of practice for which the chiropractic physician is not qualified;

c. Representations that are likely to cause the average person to misunderstand; or

d. Extravagant claims or proclamation of extraordinary skills not recognized by the chiropractic profession.

44.1(8) Willful or repeated violations of the provisions of Iowa Code chapter 272C that include, but are not limited to, a chiropractic physician's having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of chiropractic examiners or the department of public health or violated a lawful order of the board or the department of public health in a disciplinary hearing or violated the chiropractic practice Acts or rules promulgated thereunder.

44.1(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of chiropractic.

44.1(10) Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the board of chiropractic examiners the revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

44.1(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice chiropractic.

44.1(12) Willful or repeated departure from, or the failure to conform to, the chiropractic practice Acts or rules promulgated thereunder. An actual injury to a patient need not be established.

44.1(13) Inability to practice chiropractic with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

44.1(14) Willful or repeated violation of lawful rule or regulation promulgated by the board.

44.1(15) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing.

44.1(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

44.1(17) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

44.1(18) Indiscriminately or promiscuously prescribing, administering or dispensing any order for other than lawful purpose.

44.1(19) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

44.1(20) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

44.1(21) Failure to comply with a subpoena issued by the board.

44.1(22) Failure to file the reports required concerning acts or omissions committed by another licensee.

44.1(23) Repeated malpractice.

44.1(24) Obtaining any fee by fraud or misrepresentation.

44.1(25) Failing to exercise due care in the delegation of chiropractic services to or supervision of assistants, employees or other individuals, whether or not injury results.

44.1(26) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code chapter 151.

44.1(27) Failure to maintain clean and sanitary conditions at the premises in keeping with sound public health standards.

44.1(28) Failure to respond, when requested, to communications of the board within 30 days of the mailing of such communication by registered or certified mail.

44.1(29) Failure to report child abuse or dependent adult abuse.

44.1(30) Obtaining third-party payment through fraudulent means. Third-party payers include, but are not limited to, insurance companies and government reimbursement programs. Obtaining payment through fraudulent means includes, but is not limited to:

a. Reporting incorrect treatment dates for the purpose of obtaining payment;

b. Reporting charges for services not rendered;

c. Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the licensee is entitled; or

d. Aiding a patient in fraudulently obtaining payment from a third-party payer.

44.1(31) Practicing without a current license or practicing when a license is lapsed.

44.1(32) Failure to notify the board of a change of name or address within 30 days of its occurrence.

This rule is intended to implement Iowa Code chapter 272C.

[Filed 12/8/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]

CHAPTERS 45 to 48
Reserved

CHAPTER 49
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 50 to 59
Reserved

RESPIRATORY CARE

CHAPTER 260
RESPIRATORY CARE PRACTITIONERS

645—260.1(152B) Definitions.

"Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

"Accredited sponsor number" means the number assigned by the board which identifies an accredited sponsor.

"Administrator" means the administrator of the board of respiratory care examiners.

"Approved program or activity" means a continuing education program or activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

"Board" means the board of respiratory care examiners.

"Department" means the Iowa department of public health.

645—260.2(152B) Availability of information. All information regarding rules, forms, time and place of meetings, minutes of meetings, and records of hearings is available to the public between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Written information may be obtained from the Iowa Board of Respiratory Care Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Inquiries may be made by E-mail address for the board of respiratory care examiners to Khoover@idph.state.ia.us.

645—260.3(147,152B) Organization and proceedings.

260.3(1) The board consists of five members appointed by the governor and confirmed by the senate. The board shall include one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member who is not licensed to practice medicine or respiratory care and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

260.3(2) A chairperson, vice chairperson, and secretary shall be elected at the first meeting after April 30 of each year.

260.3(3) The board shall hold at least an annual meeting and may hold additional meetings called by the chairperson or by a majority of its members. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

645—260.4(152B) Requirements for temporary licensure.

260.4(1) Applicants who have not passed the registry examination for respiratory therapists administered by the National Board for Respiratory Care or an entry level certification examination for respiratory therapy technicians administered by the National Board for Respiratory Care shall meet the following requirements prior to receiving a temporary license:

a. The applicant shall complete and submit to the board the application form provided by the board.

b. The applicant shall verify on a form provided by the board that the applicant is presently functioning in the capacity of a respiratory care practitioner as defined by Iowa Code chapter 152B.

260.4(2) Temporary licenses expire on July 1, 1999. An applicant must receive a permanent license on or before July 1, 1999, in order to continue to practice respiratory care.

260.4(3) Applicants who receive a temporary license are subject to all board rules, including continuing education requirements and disciplinary procedures.

645—260.5(152B) Requirements for permanent licensure. An applicant for a license to practice as a respiratory care practitioner shall meet the following requirements:

1. The applicant shall complete and submit to the board the application form provided by the board.
2. The applicant shall satisfactorily complete the registry examination for respiratory therapists or respiratory therapy technicians administered by the National Board for Respiratory Care.
3. The applicant shall have successfully completed a respiratory care education program for training respiratory therapists.

645—260.6(152B) Application.

260.6(1) The application form shall be completed in accordance with the instructions contained in the application.

260.6(2) Each application shall be accompanied by a check or money order in the amount required payable to the Iowa Board of Respiratory Care Examiners. This fee is nonrefundable.

260.6(3) No application will be considered by the board until official copies of academic transcripts, supporting documentation and fee(s) have been received by the board.

260.6(4) Applications for licensure which do not meet the minimum criteria for licensure shall be retained by the professional licensure division for a maximum of three years from the date the application was received. Persons whose applications for licensure are more than three years old must submit a new application and applicable fee(s).

260.6(5) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing to the board within 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at the hearing.

645—260.7(152B) License renewal.

260.7(1) The biennial license renewal period shall extend from April 1 of each even-numbered year through March 31 of the next even-numbered year.

260.7(2) At least two months prior to the expiration of the license, the board office shall mail a renewal application and continuing education report form to the licensee. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

a. The licensee shall submit to the board office, 30 days before licensure expiration, the application and continuing education report form with the renewal fee as specified in rule 260.11(152B).

b. When the licensee has satisfactorily completed the requirements for renewal 30 days in advance of the expiration of the previous license, a renewal license shall be issued and mailed to the licensee before expiration of the previous license.

260.7(3) When the licensee has not satisfactorily completed the requirements for renewal before the previous license expired and prior to its becoming delinquent, the licensee shall be assessed a late fee, as specified in rule 260.11(152B).

260.7(4) If the renewal fees are not received by the board within 60 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee in addition to the renewal fee and the penalty fee outlined in subrule 260.7(1) and rule 260.11(152B).

645—260.8(152B) Inactive license. Licensees who do not practice respiratory care may be granted a waiver of compliance with continuing education requirements. The licensees shall apply in writing to the board requesting such status. The request shall contain a statement that the licensees will not hold themselves out to the public as being licensed respiratory care practitioners or practice respiratory care during the time the waiver is in effect. Inactive licensees shall pay the reinstatement fees as provided in subrule 260.11(5).

645—260.9(152B) Fees.

260.9(1) Application fee for a license to practice as a respiratory care practitioner is $75.

260.9(2) Biennial renewal fee for a license to practice as a respiratory care practitioner is $50.

260.9(3) Penalty fee for late payment of renewal fee is $25.

260.9(4) Penalty fee for earning continuing education late is $25.

260.9(5) Reinstatement fee is $25.

260.9(6) Fee for duplicate license is $10.

260.9(7) Fee for verification of licensure is $10.

260.9(8) All fees are nonrefundable.

645—260.10(152B) Students/graduates.

260.10(1) A student enrolled in a respiratory therapy training program who is employed in an organized training program in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for a limited period as follows:

1. For the duration of the respiratory therapist program, not to exceed four years.
2. For the duration of the respiratory technician program, not to exceed two years.

260.10(2) A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-license applicant."

260.10(3) Direct and immediate supervision of a respiratory care student or graduate practitioner means that the licensed respiratory practitioner shall:

1. Be continuously on site and present in the department or facility where the student or graduate is performing care;
2. Be immediately available to assist the person being supervised in the care being performed; and
3. Be responsible for care provided by students and graduates.

645—260.11(152B,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed $1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

1. The grounds listed in Iowa Code section 272C.10.
2. Violations of 645—Chapter 260.
3. Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, false representations of a material fact, whether by word or conduct, false or misleading allegations, or concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged diploma, or certificate, affidavit, identification, or qualification in making application for licensure in this state.
4. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a respiratory care practitioner having made misleading, deceptive, or untrue representations as to the practitioner's competency to perform professional services which the respiratory care practitioner is not qualified to perform.
5. Professional incompetence. Professional incompetence includes but is not limited to:
   - A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice;
   - A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other respiratory care practitioners in the state of Iowa acting in the same or similar circumstances;
   - A failure by a respiratory care practitioner to exercise in a substantial respect that degree of care which is ordinarily exercised by the average respiratory care practitioner acting in the same or similar circumstances;
   - A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of respiratory care in the state of Iowa.
6. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.
7. Habitual intoxication or addiction to the use of drugs. The inability of a respiratory care practitioner to practice respiratory care with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals, or other material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals, or other material which may impair a respiratory care practitioner's ability to practice the profession with reasonable skill and safety.
8. Involuntary commitment for treatment of mental illness, drug addiction, or alcoholism.
9. Being adjudged mentally incompetent by a court of competent jurisdiction.
10. Making suggestive, lewd, lascivious, or improper remarks or advances to a patient.
11. Verbally, physically, or sexually abusing a patient.
12. Any sexual intimidation or sexual relationship between a respiratory care practitioner and a patient.
13. Unethical practices, including:
    - Betraying a professional confidence;
    - Falsifying patient records;
    - Engaging in a professional conflict of interest;
    - Misappropriation of funds.

14. Use of untruthful or improbable statements in advertising. Use of untruthful or improbable statements in advertising includes, but is not limited to, an action by a respiratory care practitioner in making information or intention known to the public which is false, deceptive, misleading, or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to, the following:

- Inflated or unjustified expectations of favorable results.
- Self-laudatory claims that imply that the respiratory care practitioner is skilled in a field or specialty of practice for which the practitioner is not qualified.
- Extravagant claims or proclaiming extraordinary skills not recognized by the respiratory care profession.

15. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice respiratory care.

16. Failing to exercise due care in the delegation of respiratory care services to or supervision of assistants, employees, or other individuals, whether or not injury results.

17. Permitting another person to use one's license.

18. Practicing outside the scope of the license.

19. Obtaining any fee by fraud or misrepresentation.

20. Willful or repeated gross malpractice or willful or gross negligence.

21. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority; or selling, prescribing, or giving away controlled substances.

22. Violating a lawful order of the board, previously entered into by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

23. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of respiratory care.

24. Conviction of a felony related to the profession, or the conviction of any felony which would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

25. Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country.

26. Failure to report a license revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country, within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

27. Failure of a licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of respiratory care entered into in another state, district, territory, or country.

28. Knowingly submitting a false report of continuing education or failure to submit the annual report of continuing education.

29. Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

30. Failure to report a change of name or address to the office of the board within 30 days after occurrence.

31. Failure to comply with a subpoena issued by the board.

32. Rescinded IAB 7/14/99, effective 8/18/99.

33. Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J.

645—260.12(152B,272C) Code of ethics.

260.12(1) The respiratory care practitioner shall practice acceptable methods of treatment, and shall not practice beyond the competence or exceed the authority vested in the practitioner by physicians.

260.12(2) The respiratory care practitioner shall continually strive to increase and improve knowledge and skill, and render to each patient the full measure of the practitioner's ability. All services shall be provided with respect to the dignity of the patient, regardless of social or economic status, personal attributes or the nature of the patient's health problems.

260.12(3) The respiratory care practitioner shall be responsible for the competent and efficient performance of assigned duties, and shall expose incompetent, illegal or unethical conduct of members of the profession.

260.12(4) The respiratory care practitioner shall hold in confidence all privileged information concerning the patient and refer all inquiries regarding the patient to the patient's physician.

260.12(5) The respiratory care practitioner shall not accept gratuities and shall guard against conflict of interest.

260.12(6) The respiratory care practitioner shall uphold the dignity and honor of the profession and abide by its ethical principles.

260.12(7) The respiratory care practitioner shall have knowledge of existing state and federal laws governing the practice of respiratory therapy and shall comply with those laws.

260.12(8) The respiratory care practitioner shall cooperate with other health care professionals and participate in activities to promote community, state, and national efforts to meet the health needs of the public.

645—260.13(152B) Continuing education requirements for licensees. Rescinded IAB 12/27/00, effective 1/31/01.

645—260.14(152B) Approval of continuing education programs and activities. Rescinded IAB 12/27/00, effective 1/31/01.

645—260.15(152B) Procedures for approval of continuing education programs. Rescinded IAB 12/27/00, effective 1/31/01.

645—260.16(152B) Hearings regarding continuing education. Rescinded IAB 12/27/00, effective 1/31/01.

645—260.17(152B) Disability or illness. Rescinded IAB 12/27/00, effective 1/31/01.

These rules are intended to implement Iowa Code chapters 17A and 152B.

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CHAPTER 261
CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS

645—261.1(152B,272C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of respiratory care examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities, that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person shall be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Board" means the board of respiratory care examiners.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Electronically transmitted" means a program/activity that is videotaped, presented on the Iowa Communications Network (ICN), computer-based or other electronically based means that includes a posttest.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not in practice in the state of Iowa.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and does have a posttest.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who failed to meet stated obligations within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as a respiratory therapist in the state of Iowa.

645—261.2(152B,272C) Continuing education requirements.

261.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on April 1 of each even-numbered year and ending on March 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 30 hours of continuing education approved by the board.

261.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

261.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

261.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

261.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—261.3(152B,272C) Standards for approval.

261.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

261.3(2) *Specific criteria.* Continuing education hours of credit may be obtained by:

a. Programs/activities that shall be of a clinical nature related to the practice of respiratory care. Clinical nature subject matter is described as basic clinical processes that include information beyond the basic licensure requirements applicable to the normal development and use of the clinical respiratory care practitioner. Any communication course must involve the actual application to the practice of the respiratory care practitioner.

b. Program presenters who will receive one hour of credit for each hour of presentation for the first offering of the continuing education program/activity.

c. Academic coursework that meets the criteria set forth in the rules and is accompanied by an official transcript indicating successful completion of the course. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

d. American Association of Respiratory Care (AARC) continuing education programs/activities that are clinically oriented.

e. Attendance at or participation in a program or course which is offered or sponsored by an approved continuing education sponsor.

f. Maximums per biennium are as follows:

(1) No more than ten hours of approved independent study for continuing education requirements in a given continuing education compliance period.

(2) The following are approved for continuing education credit on a one-time basis per biennium and require a certificate of attendance or verification:

CERTIFICATIONS:

Advanced Cardiac Life Support	up to 12 hours
Basic Cardiac Life Support—Instructor	up to 8 hours
Basic Cardiac Life Support	up to 6 hours
Neonatal Advanced Life Support	up to 9 hours
Pediatric Advanced Life Support	up to 14 hours
Mandatory Reporting	up to 3 hours

RECERTIFICATIONS:

Advanced Cardiac Life Support	up to 4 hours
Basic Cardiac Life Support	up to 2 hours
Neonatal Advanced Life Support	up to 3 hours
Pediatric Advanced Life Support	up to 3 hours

g. Unacceptable subject matter includes marketing, personal development, time management, human relations, collective bargaining and tours.

645—261.4(152B,272C) Approval of sponsors, programs and activities for continuing education.

261.4(1) *Approval of sponsors.* An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction to be presented;

(3) Names and qualifications of instructors including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number (if applicable);

(6) Licensee's name; and

(7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following for a minimum of four years from the date of the continuing education activity:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

(3) Number of continuing education clock hours awarded.

e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors including résumés or vitae;

(4) Evaluation form(s); and

(5) A summary of the evaluations completed by the licensees.

261.4(2) *Prior approval of programs/activities.* An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);

b. Course(s) offered;

c. Course outline;
d. Total hours of instruction; and
e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

261.4(3) *Review of programs.* Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

261.4(4) *Postapproval of activities.* A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:

a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction and credit hours requested;
e. Names and qualifications of speakers and other pertinent information;
f. Request for credit which includes a brief summary of the activity; and
g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

261.4(5) *Voluntary relinquishment.* The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—261.5(152B,272C) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

261.5(1) The information on the form shall include:

a. Title of continuing education activity;
b. Date(s);
c. Sponsor of the activity;
d. Board-approved sponsor number;
e. Number of continuing education hours earned; and
f. Teaching method used.

261.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a certificate of attendance or verification for all reported activities that includes the following information:

(1) Date(s), location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation; and

(2) Number of contact hours for program attended.

c. For auditing purposes, the licensee must retain the above information for four years.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of the continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—261.6(152B,272C) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all of the renewal fees then due;
3. Pays all late fees, to a maximum of two bienniums, which have been assessed by the board for failure to renew;
4. Pays reinstatement fee; and
5. Provides evidence of satisfactory completion of continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 30 by the number of bienniums since the license lapsed to a maximum of two bienniums or 60 hours of continuing education credit.

645—261.7(152B,272C) Continuing education waiver for active practitioners. A respiratory therapist licensed to practice as a respiratory therapist shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing respiratory therapist.

645—261.8(152B,272C) Continuing education exemption for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

645—261.9(152B,272C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—261.10(152B,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of respiratory therapy in the state of Iowa, satisfy the following requirements for reinstatement.

261.10(1) Reinstatement of the inactive license may be granted by the board if the applicant:

a. Submits a written application for reinstatement to the board;

b. Pays the current renewal fee then due; and

c. Pays the reinstatement fee.

261.10(2) The applicant shall furnish in the application evidence of one of the following:

a. Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Successful completion of 30 hours of approved continuing education hours; or

c. Successful completion of the approved entry-level examination conducted within one year prior to filing of the application for reinstatement; or

d. Successful completion of a minimum 75-hour refresher course from a school accredited by the Committee on Accreditation of Respiratory Care (CoARC) within one year prior to filing of the application for reinstatement.

645—261.11(152B,272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 152B.

[Filed 12/8/00, Notice 10/24/00—published 12/27/00, effective 1/31/01]

CHAPTER 262
CHILD SUPPORT NONCOMPLIANCE

Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 263 to 268
Reserved

CHAPTER 269
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Rescinded IAB 7/14/99, effective 8/18/99

CHAPTERS 270 to 279
Reserved

MEDICAL EXAMINERS BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]

CHAPTER 1
ADMINISTRATIVE AND REGULATORY AUTHORITY

[Prior to 5/4/88, see 470—135.1 to 135.10]

653—1.1(17A,147) Definitions. The following definitions shall be applicable to the rules of the board of medical examiners:

"Acupuncture" shall mean a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Acupuncturist" shall mean a person licensed to practice acupuncture in this state.

"Board" shall mean the board of medical examiners of the state of Iowa.

"Department" shall mean the Iowa department of public health.

"Director" shall mean the director of the department.

"Disciplinary proceeding" shall mean any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

"License" shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or acupuncture under the laws of the state of Iowa.

"Licensee" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or acupuncture under the laws of the state of Iowa.

"Licensee discipline" or *"discipline"* shall mean any sanction the board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional care.

"Malpractice" shall mean any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of the physician's profession.

"Medical practice Acts" shall refer to Iowa Code chapters 147, 148, 150 and 150A.

"Order" shall mean a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

"Peer review" shall mean evaluation of professional services rendered by a professional practitioner.

"Peer reviewer(s)" shall mean one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

"Physician" shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy under the laws of this state.

"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medical concepts.

"The practice of medicine and surgery" shall mean holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition. This rule shall not apply to licensed podiatrists, chiropractors, physical therapists, nurses, dentists, optometrists, acupuncturists, pharmacists, and other licensed health professionals who are exclusively engaged in the practice of their respective professions.

"Prescription drugs" means drugs, medicine and controlled substances which by law can only be prescribed for human use by persons authorized by law.

"Profession" shall mean medicine and surgery, osteopathic medicine and surgery or osteopathy, or acupuncture.

"Respondent" shall mean a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, or acupuncuture.

"Rule" shall mean a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 148, 148E, 150 and 150A.

653—1.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 68B, 147, 148, 148E, 150, 150A, 252J, 261 and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and acupuncture; and the imposition of discipline upon licensees as provided by statute or rule.

653—1.3(17A) Organization of board. The board:

1.3(1) Makes policy relative to matters involving medical and acupuncture education, licensure, practice, and discipline.

1.3(2) Conducts business according to board-approved policy.

1.3(3) Elects a chairperson, vice chairperson and a secretary from its membership at the last regular board meeting prior to May 1 or at another date in April scheduled by the board.

1.3(4) A majority of the members of the board shall constitute a quorum. Official action requires a majority vote of members present.

1.3(5) Has the authority to:

a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture by acupuncturists.

b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture by licensed acupuncturists.

c. Determine in any case whether an investigation or a disciplinary action is warranted.

d. Initiate and prosecute disciplinary proceedings.

e. Impose licensee discipline.

f. Request that the attorney general file appropriate court action for enforcement of the board's authority relating to licensees or other persons who are charged with violating statutes or rules the board administers or enforces.

g. Establish and register peer reviewers.

h. Refer to one or more registered peer reviewers for investigation, review, and report to the board any complaint or other evidence of an act or omission which the board has reasonable grounds to believe may constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

i. Determine and administer the renewal of licenses.

j. Establish and administer rules for continuing education requirements as a condition of license renewal.

k. Establish fees for examination, fees for the issuance of licenses and fees for other services provided by the board.

l. Establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include:

(1) Executive committee. The membership shall be composed of the elected officers of the board and an at-large member appointed by the chairperson. Its duties may include, but are not limited to:

- Guidance and supervision of the executive director.
- Budgetary review and recommendations to the board.
- Review and recommendations to the board on rules and legislative proposals.

(2) Disciplinary committees. Their duties may include:

- Considering complaints in which preliminary investigation has shown further review or investigation is needed.
- Conducting interviews as needed with licensees under investigation or with licensees with restricted licenses, except for final appearances.
- Referring matters requiring peer review to a peer review consultant or committee.
- Reviewing cases and recommending appropriate action to the board.

(3) Intake and screening committee. Its duties may include:

- Reviewing complaints and recommending appropriate action including further investigation, referral to a disciplinary committee; or referral to the board for closure.

(4) License and examination committee. Its duties may include:

- Recommending appropriate action on completed applications for licensure.
- Conducting interviews with applicants when appropriate.
- Reviewing licensure examination matters.
- Reviewing and recommending to the board appropriate changes in licensure application forms.

(5) Allied health and monitoring committee. The committee oversees all matters relating to the allied health professions under the board's jurisdiction and to the monitoring of physicians with board orders. The committee's responsibilities include:

- Serving as a liaison between the board and the board of physician assistant examiners where appropriate.
- Reviewing and making recommendations to the full board on all matters relating to the licensure of acupuncturists.
- Monitoring physicians whose licenses are restricted by a board order, e.g., probation, and making recommendations to the full board on these matters.
- Reviewing and making recommendations to the full board on volunteer physician applicants who are under investigation or who have had disciplinary action against a license in the past or present.

1.3(6) Appoints a full-time executive director who:

a. Is not a member of the board.

b. Under the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, osteopathy, and the practice of acupuncture; issuance of subpoenas on behalf of the board or a committee of the board during the investigation of possible violations; enunciation of policy on behalf of the board.

653—1.4(17A) Official communications. All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686.

653—1.5(17A) Office hours. The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday to Friday of each week, except holidays.

653—1.6(17A) Meetings. The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office.

Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend the meetings.

653—1.7(17A,147) Petition to promulgate, amend or repeal a rule.

1.7(1) An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

1.7(2) The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. The petitioner shall indicate deletions to the current rule with brackets and additions to the current rule with underlining.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

1.7(3) The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA BOARD OF MEDICAL EXAMINERS and shall be deemed filed when received by the executive director.

1.7(4) Upon receipt of the petition the executive director shall:

a. Mail within ten days a copy of the petition to any parties named in it. The petition shall be deemed served on the date of mailing to the last-known address of the party being served.

b. Advise petitioner that petitioner has 30 days within which to submit written views.

c. Schedule oral presentation of petitioner's view if the board so directs.

d. Within 60 days after date of submission of the petition, either deny the petition or initiate rulemaking proceedings in accordance with Iowa Code chapter 17A.

1.7(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

653—1.8(17A) Public hearings prior to the adoption, amendment or repeal of any rule.

1.8(1) *Scheduling a public hearing.* The board may at its discretion hold a public hearing, or it shall hold a public hearing upon the written request of at least 25 interested persons, a governmental subdivision, an agency, or an association of 25 persons.

a. If the board chooses to hold a public hearing, it will announce the date, time, and location in the Iowa Administrative Bulletin.

b. If the board has not scheduled a public hearing and a person or an organization wishes to request one, a written request for a public hearing shall be received by the executive director within 20 days after the notice of intended action has been published.

(1) The executive director shall schedule a public hearing if the request(s) meets the requirements of this rule.

(2) The executive director shall set the date, time, and location of the public hearing.

(3) The individual or organization requesting the public hearing shall be notified of the date, time, and location of the public hearing by certified mail.

1.8(2) *Proceedings at the public hearing.* The chairperson of the board shall serve as the presiding officer or appoint a presiding officer over the public hearing.

a. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled.

(1) Any individual(s) desiring to make written comments in advance of the hearing shall submit these comments to the executive director. The presiding officer shall accept written comments at the hearing.

(2) Any individual(s) desiring to make an oral presentation shall be present at the hearing and ask to speak.

b. The authority of the presiding officer during the public hearing includes:

(1) Setting a time limit on oral presentations if necessary;

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing;

(3) Ruling that the oral presentation or discussion is not pertinent to the hearing; and

(4) Accepting any written testimony.

c. The conduct of the presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive written and oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within 30 days of the date of hearing the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

653—1.9(17A) Declaratory orders.

1.9(1) *Petition for declaratory order.* Any person may file a petition with the board of medical examiners for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by the board office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board office with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.

2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.

3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by 1.9(7).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

1.9(2) *Notice of petition.* Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 1.9(6)"*c*" to whom notice is required by any provision of law. The board may also give notice to any other persons.

1.9(3) *Intervention.*

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

c. A petition for intervention shall be filed with the executive director at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BOARD OF MEDICAL EXAMINERS

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.

2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

1.9(4) *Briefs.* The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

1.9(5) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the executive director at the board office.

1.9(6) *Service and filing of petitions and other papers.*

a. When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the executive director at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 653—12.19(17A).

1.9(7) *Consideration.* Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

1.9(8) *Action on petition.*

a. Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board shall take action on the petition as required by Iowa Code section 17A.9(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 12.11(1).

1.9(9) *Refusal to issue order.*

a. The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

(3) The board does not have jurisdiction over the questions presented in the petition.

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

1.9(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

1.9(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

1.9(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of medical examiners. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapters 17A, 21, 68B, 148, 148E, 150, 150A, 252J, 261, and 272C.

653—1.10(68B) Selling of goods or services by members of the board or impaired physician review committee (IPRC).

1.10(1) *Application of the rule.* The board members and members of the IPRC shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the department except as authorized by this rule.

1.10(2) *Consent.* Consent shall be given by a majority of the members of the board. Consent shall not be given to an official to sell goods or services to an individual, association, or corporation regulated by the department unless all of the following conditions are met:

a. The official requesting consent does not have authority to determine whether consent should be given.

b. The official's duties or functions are not related to the department's regulatory authority over the individual, association or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the official's duties or functions.

c. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department.

d. The selling of the good or service does not result in the official's selling a good or service to the department on behalf of the individual, association, or corporation.

1.10(3) *Authorized sales.* Sales may be authorized under the following conditions:

a. A member of the board or IPRC may sell goods or services to any individual, association, or corporation regulated by any division within the department, other than the board or committee on which that official serves. This consent is granted because the sale of such goods or services does not affect the member's duties or functions on the board or IPRC.

b. A member of the board may sell goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board or IPRC member's duties or functions on the board or IPRC, respectively. In the event an individual, association, or corporation regulated by the board, to whom a board or IPRC member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board or IPRC member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board or IPRC member to a member of the public, that board or IPRC member is otherwise prohibited by law from participating in any discussion or decision by the licensing board in that case.

c. Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the seller's duties or functions, would give the buyer an advantage in dealing with the board or IPRC, or would otherwise present a conflict of interest.

1.10(4) *Application for consent.* Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the department, an official must obtain prior written consent unless the sale is specifically allowed in subrule 1.10(3). The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

1.10(5) *Limitation of consent.* Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this chapter does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting consent to ensure compliance with all other applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of medical examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

653—2.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "Iowa Board of Medical Examiners".

653—2.3(17A,22) Requests for access to records.

2.3(1) *Location of record.* In lieu of the words "insert agency head", insert "Iowa Board of Medical Examiners" and in lieu of "insert agency name and address", insert "Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686".

2.3(2) *Office hours.* In lieu of "insert customary office hours and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "the agency's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays".

2.3(7) *Fees.*

c. *Search and supervisory fees.* An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-quarter hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during the examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

653—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "designate office" insert the words "Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686".

653—2.7(17A,22) Consent to disclosure by the subject of a confidential record. Insert at the end of the model rule the following new sentence. "This section does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release."

653—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in subrule 2.10(1) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

653—2.10(17A,22) Routine use.

2.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, investigators, members, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, member, or agent, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Disclosure to the attorney general's office for use in performing its official function.

e. Transfers of information within the agency office and among board members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; Federation of State Medical Boards of the United States, Inc., American Medical Association, American Osteopathic Association, Iowa Medical Society, Iowa Osteopathic Medical Association; Educational Commission for Foreign Medical Graduates; Iowa Physician Assistant Society; Physician's Assistant Advisory Committee; approved Advanced Care Training facilities; or to local units of government as appropriate to carry out the agency's statutory authority.

f. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

h. Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

653—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 2.7(17A,22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter. This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

653—2.12(17A,22) Release to subject. The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 653—2.6(17A,22). However, the agency need not release the following records to the subject:

1. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code sections 22.7(18) and 272C.6(4) or other provision of law.
2. All information in licensee complaint and investigation files maintained by the agency for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.
3. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
4. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.
5. As otherwise authorized by law.

653—2.13(17A,22) Availability of records.

2.13(1) Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.70 and 422.72)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. All information in complaint and investigation files maintained by the agency for purposes of licensee discipline except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing is confidential in accordance with Iowa Code section 272C.6(4).

d. Criminal history or prior misconduct of an applicant for licensure. (Iowa Code chapters 22, 147, and 692)

e. Information relating to the contents of an examination for licensure. (Iowa Code section 147.21)

f. Information relating to the results of an examination for licensure other than final score except for information about the results of an examination which is given to the person who took the examination. (Iowa Code section 147.21)

g. Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code chapter 125 and section 228.2 and 42 U.S.C. 290 ee-3 and ff-3)

h. Minutes of closed meetings of the agency. (Iowa Code section 21.5(4))

i. The record of a disciplinary hearing which is closed to the public. However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(16) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. (Iowa Code sections 21.5(4) and 272C.6(4))

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. Any other information or records made confidential by law.

2.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorized limited or discretionary disclosure as provided in rule 653—2.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

2.13(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

653—2.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. The description also indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The records systems maintained by the agency are:

2.14(1) *Records of agency disciplinary hearings.* These records contain information about licensees and certificants who are the subject of an agency disciplinary proceeding or other action. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, 148C, 150, 150A, and 272C. This information is stored electronically and on paper. The information contained in "records of closed" board hearings is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 272C.6 or other provisions of the law.

2.14(2) *Information in complaint and investigation files maintained by the agency for purposes of licensee discipline.* This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

2.14(3) *Information on nonlicensee investigation files maintained by the agency.* This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of the law.

2.14(4) *Licensee disciplinary proceedings.* The following information regarding licensee disciplinary proceedings:

a. Formal charges and notices of hearing.

b. Completed records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4) or 272C.6.

c. Final written decisions imposing sanctions, including informal stipulations and settlements.

2.14(5) *Continuing education records.* These records contain educational information about persons licensed or certified by the agency. This information is collected pursuant to the authority granted in Iowa Code chapter 272C. This information is stored on paper only.

2.14(6) *Examination records.* These records contain information about applicants for any of the following examinations: United States Medical Licensing Examination (USMLE), Federation of State Medical Boards of the United States, Inc. - Federation Licensing Examination (FLEX), National Board of Medical Examiners, National Board of Osteopathic Medical Examiners, National Commission for the Certification of Acupuncturists, individual state or territorial medical licensing boards, Licentiate of the Medical Council of Canada examination (LMCC), Special Purpose Examination (SPEX), or other examination approved by the board. These records may also contain information about applicants who pursue licensure by endorsement, score transfer, or other means. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, 148E, 150, and 150A and is stored electronically and on paper. Portions of the examination records are confidential in part pursuant to Iowa Code sections 22.7(1), 22.7(19), and 147.21.

2.14(7) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators and agents. The records include a variety of attachments such as interviews; drug audits; medical records; pharmacy records; exhibits; police reports; and investigators' comments, conclusions, and recommendations. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, 148C, 150, and 150A. This information is stored electronically on microfilm and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7, 147.21, and 272C.6(4).

2.14(8) *Licensure and certification records.* These records contain information about doctors of medicine and surgery, osteopathic medicine and surgery, and osteopathy; and registered acupuncturists who are licensed or registered by the agency. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, 148E, 150, and 150A and is stored on paper, in automated data processing systems, on microfiche, on CD-ROM, floppy disk, and in the state archives. These records may contain information which is confidential under subrule 2.13(2).

2.14(9) *Personnel records.* These records contain personal information about board members, registered peer review committee members, and staff. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. This information is stored on paper and microfiche. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7.

2.14(10) *Routine probation supervision reports.* These reports contain information about licensees or certificants who have been placed on professional probation as the result of an official agency disciplinary action and contain information relating to the licensees' or certificants' compliance with the terms of probation and are confidential under Iowa Code section 272C.6.

2.14(11) *Routine consent agreement monitoring reports.* These reports contain information about licensees or certificants who have been granted licensure or certification under special terms and conditions through official agency action, and contain information relating to the licensees' or certificants' compliance with the terms of the consent agreement and are confidential under Iowa Code section 272C.6.

653—2.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 653—2.1(17A,22). These records are routinely available to the public. The agency's files of these records may contain confidential information as discussed in rule 653—2.13(17A,22). These records may contain information about individuals. These records include:

2.15(1) *Agency calendars, agenda, news releases, statistical reports and compilations, newsletters, publications, correspondence, and other information intended for the public.* These records may contain information about individuals, including board members and staff. This information is stored on paper only.

2.15(2) *Minutes of open meetings of the agency.* These records contain information about people who participate in board meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored electronically and on paper.

2.15(3) *Records of board rule-making proceedings.* These records may contain information about individuals making written or oral comments on rules proposed by the agency. This information is collected pursuant to Iowa Code section 17A.4. This information is stored electronically and on paper.

2.15(4) *Board decisions, findings of fact, final orders, advisory opinions, and other statements of law, policy, or declaratory rulings issued by the agency in the performance of its function.* These records are open to the public except for information that is confidential according to rule 653—2.13(17A,22). This information is stored on paper and on microfilm.

2.15(5) *Other records.* The agency maintains other records which do not generally contain information pertaining to individuals. These records are routinely open to the public. These records include but are not limited to:

a. Financial reports pertaining to the agency's budget including its revenue and expenses. This information is stored electronically and on paper.

b. Blank forms utilized by the agency and its staff in the performance of its function. This information is stored on paper only.

c. Grant proposals and applications submitted by, on behalf of, or in conjunction with the agency for the purpose of performing the agency's function or furthering its goals and objectives. This information is stored on paper only.

d. A record inventory of all categories of information and records maintained by or on behalf of the board. This inventory is stored on paper only.

653—2.16(17A,22) Data processing system. The agency does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

653—2.17(17A,22) Applicability.

2.17(1) This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records.

2.17(2) This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by rules of another board or agency.
4. Apply to guarantees, including local governments or subdivisions thereof, administering state-funded programs.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative disciplinary proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 3
WAIVERS AND VARIANCES

653—3.1(17A,147,148,150,150A) Definition. For purposes of this chapter, a "waiver or variance" means an action by the board which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

653—3.2(17A,147,148,150,150A) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

653—3.3(17A,147,148,150,150A) Applicability of chapter. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

653—3.4(17A,147,148,150,150A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 3.6(17A,147,148,150,150A), the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

653—3.5(17A,147,148,150,150A) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

3.5(1) *License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

3.5(2) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

3.5(3) *Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive director.

3.5(4) *File petition.* A petition is deemed filed when it is received in the board office. A petition should be sent to the Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The petition must conform to the form specified in rule 3.17(17A,147,148,150, 150A).

653—3.6(17A,147,148,150,150A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 3.4(17A,147,148,150,150A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the past five years.
6. Any information known to the requester regarding the board's action in similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.
8. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

653—3.7(17A,147,148,150,150A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

653—3.8(17A,147,148,150,150A) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that all persons to whom notice is required by any provision of law, including the petitioner, receive notice within 30 days of the receipt of the petition, that the petition is pending and a concise summary of its contents. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the board attesting that notice has been provided.

653—3.9(17A,147,148,150,150A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

653—3.10(17A,147,148,150,150A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

3.10(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

3.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

3.10(3) *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

3.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

3.10(5) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

3.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

3.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

3.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

3.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

653—3.11(17A,147,148,150,150A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

653—3.12(17A,147,148,150,150A) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

653—3.13(17A,147,148,150,150A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

653—3.14(17A,147,148,150,150A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

653—3.15(17A,147,148,150,150A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

653—3.16(17A,147,148,150,150A) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

653—3.17(17A,147,148,150,150A) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE BOARD OF MEDICAL EXAMINERS

Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter).	PETITION FOR WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also, the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.
2. Describe and cite the specific rule from which a waiver is requested.
3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.
4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:
   a. Why applying the rule would result in undue hardship to the petitioner;
   b. Why waiving the rule would not prejudice the substantial legal rights of any person;
   c. Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
   d. How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the board and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the board's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question, or that might be affected by the grant of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the grant of the waiver or variance.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature	Date

These rules are intended to implement Iowa Code chapter 17A as amended by 2000 Iowa Acts, chapter 1176, and Iowa Code chapters 147, 148, 150, and 150A.

[Filed 12/1/00, Notice 10/18/00—published 12/27/00, effective 1/31/01]

CHAPTERS 4 to 10
Reserved

b. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus FLEX Component II with a passing score of 75 or better on each examination;

c. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus NBME Part III or USMLE Step 3 with a passing score of 75 or better on each examination.

653—11.5(147,148,150,150A) Licensure by endorsement. A license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy by endorsement may be issued on the basis of a written examination in substantially all of the subjects required by this board given by a state or national examining board having endorsement relations with the board.

11.5(1) *Eligibility requirements.* An applicant for licensure by endorsement shall meet all of the following requirements:

a. Submit a completed application form accompanied by the required fee as specified in rule 11.2(147,148,150,150A);

b. Meet the eligibility criteria for permanent licensure specified in rule 11.3(147,148,150A);

c. Except as otherwise provided in this subrule, fulfill all the requirements for licensure by examination administered in this state specified in rule 11.4(147,148,150A);

d. Authorize the appropriate testing authority to verify scores obtained on the examination including the general or weighted average, the scores on each component of the FLEX, part of the NBME, or step of the USMLE accepted in combination thereof as specified in subrule 11.4(6) or provide certification of national board credentials or LMCC scores. In lieu of the aforementioned, provide the certificate of examination issued by the National Board of Osteopathic Examiners of the United States of America; and

e. For applicants who took the FLEX prior to January 1, 1985, provide the following documentation:

(1) Certification under seal that the applicant passed the FLEX with a FLEX-weighted average of 75 percent or better, as determined by the state medical licensing authority, in no more than two sittings;

(2) Verification under seal of medical licensure in the state that administered the examination; and

(3) Evidence of current certification by an American specialty board approved or recognized by the Council on Medical Education of the American Medical Association, the American Board of Specialties, or the American Osteopathic Association.

11.5(2) *Restrictions.* As circumstances warrant, the board may determine that any application for licensure by endorsement is subject to the following:

a. The board may impose limits or restrictions on the practice of any applicant once licensed in this state that are equal in force to the limits or restrictions imposed on the applicant by any jurisdiction with which this state has endorsement relations.

b. The board reserves the right to review the examination responses and grades upon which licensure by endorsement is to be based before accepting certification of the examination.

c. The board may require a candidate for licensure by endorsement to appear for an interview before the full board or a committee of the board as part of the application process.

d. The board may defer final action on an application for licensure if there is an investigation or disciplinary action pending against an applicant, who may otherwise meet the requirements for licensure, in any jurisdiction with which this state has endorsement relations until such time as the board is satisfied that licensure of the applicant poses no risk to the health and safety of Iowans.

e. The board may require any applicant for licensure by endorsement to sit for a written, oral or practical examination of its choosing.

653—11.6(148) License to practice as a resident physician.

11.6(1) *General provisions.* The license shall be designated "Resident Physician License" and shall authorize the licensee to practice as a resident physician, while under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution or program approved for this purpose by the board. A resident physician license shall expire two years following the date of issuance and may be annually renewed thereafter at the discretion of the board.

11.6(2) *Requirements for the initial resident physician license.* Each applicant shall:

a. Submit a completed application form accompanied by a fee of $75.

b. Present a notarized photocopy of a diploma issued by a school or college of medicine and surgery or a school or college of osteopathic medicine and surgery approved by the board, or present other evidence of equivalent medical education approved by the board. The board may accept, in lieu of a diploma from a school or college of medicine approved by it, all of the following:

(1) A notarized photocopy of a diploma issued by a school or college of medicine which has been neither approved nor disapproved by the board.

(2) The standard certificate issued by the Educational Commission for Foreign Medical Graduates or the completion of a fifth pathway program in accordance with criteria established by the American Medical Association.

c. Candidates may be required to satisfactorily complete an examination prescribed by the board.

(1) The board may require written, oral or practical examination.

(2) The candidate may be required to appear for a personal interview before the board or a committee of the board.

d. The board may refuse to grant renewal of the license pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code section 147.55.

11.6(3) *Requirements for renewal of a resident physician license.*

a. If the resident physician licensee has not qualified for and received a permanent license, the board shall send a renewal notice by mail at least 60 days prior to the expiration date of the resident physician license.

b. The resident physician shall be qualified for renewal for one year by submitting a completed renewal application that documents why the individual has not obtained a permanent license, the renewal fee of $25, and a statement by the residency program of the individual's progress in the program and any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action. No documentation of continuing medical education is required since a resident is in training.

c. Failure of the licensee to renew a license within 30 days following its expiration date shall cause the license to lapse and shall invalidate it. A licensee whose license has lapsed and become invalid is prohibited from the practice of medicine and surgery or osteopathic medicine and surgery until the lapsed license is renewed or replaced by a permanent medical license.

11.6(4) *Discipline of a resident license.* The board may discipline a license for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code section 147.55 or 148.6 or Iowa Code chapter 272C.

653—11.7(148) Temporary licensure.

11.7(1) The board may, in its discretion, issue a temporary license authorizing the licensee to practice medicine and surgery whenever, in the opinion of the board, a need exists therefor and the person possesses the qualifications prescribed by the board for such license, which shall be substantially equivalent to those required under Iowa Code chapter 148 or chapter 150A as the case may be. A temporary license shall be issued for one year and, at the discretion of the board, may be annually renewed, not to exceed two additional years, at a fee of $150 per year.

11.7(2) Each applicant shall:

a. Submit a completed application form accompanied by a fee of $150.

b. Present a notarized photocopy of a diploma issued by a school or college of medicine and surgery or osteopathic medicine and surgery approved by the board. The board may accept, in lieu of a diploma from a medical college approved by it, all of the following:

(1) A notarized photocopy of a diploma issued by a medical college which has been neither approved nor disapproved by the board; and

(2) The successful completion of one year of training as a resident physician, which training has been approved by the board; and

(3) The recommendation of the Educational Commission for Foreign Medical Graduates or similar accrediting agency.

(4) The board may waive the provisions of paragraph *"b"*(1), *"b"*(2) and *"b"*(3) for a foreign physician, here for teaching purposes only, who is properly admitted under a visa of the State Department of the United States.

(5) Furnish an affidavit from a licensed physician, superintendent of an institution or dean of an approved college of medicine and surgery or osteopathic medicine and surgery in this state setting forth facts supporting the need that exists for the issuance of said license.

11.7(3) Candidates may be required to satisfactorily complete an examination prescribed by the medical examiners.

a. The medical examiners may require written, oral or practical examinations.

b. In any case, the medical examiners may require the candidate to appear for a personal interview before the board or a member thereof.

c. Grades received in a license examination before the duly constituted authority of another state, territory, foreign country or before the National Board of Medical Examiners or National Board of Osteopathic Examiners may be accepted in lieu of a written examination conducted by the medical examiners, in which instance:

(1) The applicant must furnish a copy of the national board certificate or an original certificate of license obtained as a result of such examination.

(2) The statements made in the application must be reviewed and verified by the examining board issuing the original certificate, who will also certify, under seal, as to the schedule of subjects in which the applicant was examined, the grades given thereon and the general average attained.

653—11.8(147,148,150A) Special licensure. The board may, in its discretion, issue special licensure.

A special license to practice medicine and surgery or osteopathic medicine and surgery may be issued for a period of not more than one year, and may be renewed annually prior to expiration, to a member of the academic staff of a medical or osteopathic school or college.

An applicant for special license shall file a completed application on a form provided by the board, accompanied by documentation attesting to the professional qualifications of the applicant, and a letter of recommendation from a dean of the medical school in which the applicant will be practicing. A special license shall specifically limit the licensee to a practice associated with the hospital or school in which the licensee is a member of the academic staff. Persons licensed to practice by authority of a special license shall be subject to the same disciplinary rules and procedures as other physician licensees.

653—11.9(147,148,150,150A) Application for licensure. Upon receipt of a completed application for permanent licensure by examination, licensure by endorsement, temporary licensure, resident physician licensure or special licensure, the executive director as authorized by the board has discretion to:

1. Authorize the issuance of the license.

2. Refer the license application to the license and examination committee for review and consideration when the executive director determines that matters including, but not limited to, prior criminal history, chemical dependence, competency, physical or psychological illness, or professional disciplinary history are relevant in determining the applicants' qualifications for licensure.

11.9(1) Following review and consideration of a physician licensure application referred by the executive director, the license and examination committee may at its discretion:

a. Recommend issuance of the license.

b. Recommend to the board denial of the license.

c. Recommend to the board issuance of the license under certain terms and conditions or with certain restrictions.

d. Refer the license application to the board for review and consideration without recommendation.

11.9(2) Following review and consideration of a physician licensure application referred by the license and examination committee the board shall:

a. Authorize the issuance of the license,

b. Deny the issuance of the license, or

c. Authorize the issuance of the license under certain terms and conditions or with certain restrictions.

11.9(3) Waivers. Rescinded IAB 12/27/00, effective 1/31/01.

653—11.10(272C) Definitions—continuing education. For the purpose of these rules, the following definitions shall apply.

"Accredited sponsor" means an institution or organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules.

"Active licensee" means any person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in Iowa who has met all conditions of license renewal and maintains a current license to practice in this state.

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules. All continuing education activities classified by the accredited sponsor as category 1 shall be deemed automatically approved.

"Biennial period" means a period of time beginning on the first day of the month in which a physician was born and extending two years hence with regard to odd and even years.

"Board" means the board of medical examiners, created pursuant to Iowa Code chapter 147.

"Category 1 activity" means any formal education program which is sponsored or cosponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, Iowa Medical Society, or by the Committee on Continuing Medical Education of the American Osteopathic Association and is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit, and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Activities designated as Formal Cognates by the American College of Obstetricians and Gynecologists or as Prescribed Credit by the American Academy of Family Physicians are accepted as equivalent to category 1 activities.

"Continuing education" means that education which is obtained by a person licensed to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

"Hour of continuing education" means a clock-hour spent after December 31, 1978, by a licensee in actual attendance at or completion of an approved continuing education activity.

b. Completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of an approved examination conducted within one year immediately prior to the submission of such application for reinstatement.

653—11.19(272C) Exemptions for active practitioners. A physician licensed under this rule shall be exempt from the continuing education requirements for:

11.19(1) Periods that the licensee serves honorably on active duty in the military;

11.19(2) Periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and the licensee meets all requirements of that state or district for practice therein;

11.19(3) Periods that the licensee is a government employee working in the licensee's specialty and assigned to duty outside the United States; or

11.19(4) For other periods of active practice and absence from the state approved by the board.

653—11.20(272C) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and attending physician. Waiver of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion of all of the minimum educational requirements waived by such methods as may be prescribed by the board.

653—11.21(272C) Noncompliance. A licensee who in the opinion of the board does not satisfy the requirements for license renewal stated in this chapter will be placed on probationary status and notified of the fact within 30 days after the renewal date. Within 90 days after such notification, the licensee must submit evidence to the board demonstrating that the deficiencies have been satisfied. If the deficiencies are not made up within the specified period of time, the licensee's license will be classified as lapsed without further hearing.

653—11.22(147) Licenses. When the board issues a license to practice, it shall record the licensee's name, license number and other identifying information in the board's computer records, in keeping with the intent of Iowa Code section 147.5. These computer files shall be backed up weekly with off-site storage of the backup files. Computer record keeping will be done in lieu of prior technology, a handwritten record book and cross-referenced licenses.

653—11.23 to **11.29** Reserved.

653—11.30(147) License renewal. A permanent license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy shall expire biennially on the first day of the birth month of the licensee and may be renewed as determined by the board without examination upon application of the licensee. Licenses of persons born in even-numbered years shall expire in even-numbered years, and licenses of persons born in odd-numbered years shall expire in odd-numbered years. Application for license renewal shall be made in writing accompanied by the required fee not later than the expiration date. Renewal certificates shall be displayed along with the original license in the primary location of practice.

11.30(1) Each licensee shall be sent a renewal notice by mail at least 60 days prior to the expiration date of the license. A penalty of $50 per calendar month shall be assessed by the board after the expiration date of the license. The penalty, however, shall not exceed $200. Failure of a licensee to renew a license within four months following its expiration date shall cause the license to lapse and shall invalidate it. A licensee whose license has lapsed and become invalid is prohibited from the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy until the license is reinstated in accordance with rule 11.32(147).

11.30(2) An issued permanent license shall be valid for a period not to exceed two years and two months as determined by the board in accordance with the physician's birth month and year.

11.30(3) The renewal fee for a permanent license issued during a calendar year shall be prorated on a monthly basis according to the date of issue and the physician's month and year of birth.

11.30(4) Licensees shall notify the board of any change in their home address or the address of their place of practice, within 30 days of making an address change.

653—11.31(147) Fees. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of the application provided such withdrawal is received in writing by the cancellation date specified by the board. Examination fees shall be nontransferable from one examination to another. Refunds of examination fees shall be subject to a nonrefundable administrative fee of $75 per application. The administrative fee shall be deducted by the board or its designated testing service prior to actual refund.

11.31(1) For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board prior to January 1, 1987, $350. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board between January 1, 1987, and May 31, 1991, $525. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board subsequent to May 31, 1991, $300.

11.31(2) For a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy issued by endorsement, $300.

11.31(3) For a renewal of an active license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, $325 per biennial period or a prorated portion thereof for a period of less than two years as determined by the board to facilitate biennial renewal according to month and year of birth.

11.31(4) Upon written request, the board may provide the following information about the status of licensees or examinees for the designated fees:

a. Written verification that a licensee in this state is licensed.

(1) For a certified statement verifying licensure including the board seal or a letter of good standing, $40;

(2) For verification of licensure status not requiring certified statements or letters of up to ten licensees, $15;

(3) For verification of licensure status from a password-protected Web site, the board shall charge a subscriber $3 per verification or an annual subscription fee of $2,000 for an unlimited number of verifications in 12 months.

b. Written certification of scores of an examination given by the board in this state as permitted under Iowa Code section 147.21 and 653 IAC 1.13(2)*"f"* and *"g."*

(1) For a certified statement of grades attained by examination, $45.

(2) For a certified statement of grades attained by examination including examination history or other additional documentation, $55.

653—11.34(147,148,150) Licensure denied—appeal procedure. An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of the appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of licensure denial to the applicant or, not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at the hearing.

653—11.35(147,148,150) Licensure denied—hearing. If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to 11.34(147,148,150), the hearing and subsequent procedures shall be pursuant to the process outlined in 653—subrules 12.50(13) to 12.50(32) inclusive.

653—11.36(17A,147,148,272C) Waiver or variance prohibited. Rules in this chapter are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

These rules are intended to implement Iowa Code chapters 147, 148, 150, 150A and 272C.

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CHAPTER 12
MANDATORY REPORTING AND GROUNDS FOR DISCIPLINE

[Prior to 5/4/88, see 470—135.201 to 470—135.215, and 470—135.301]

653—12.1(272C) Mandatory reporting—judgments or settlements. Each licensee, including licensees holding lapsed licenses, shall report to the board every adverse judgment in a malpractice action to which the licensee is a party and every settlement of claim against the licensee alleging malpractice. The report together with a copy of the judgment or settlement must be filed with the board within 30 days from the date of said judgment or settlement.

653—12.2(272C) Mandatory reporting—wrongful acts or omissions.

12.2(1) *Definitions.* For the purposes of this rule, the following definitions apply.

"Knowledge" means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

"Reportable conduct" means wrongful acts or omissions that may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee.

12.2(2) *Reporting requirement.* A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct, the date, time, place and circumstances in which the conduct occurred, and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. No licensee is required to report information deemed to be a confidential communication as a result of a physician-patient relationship or which is prohibited by state or federal statute.

653—12.3(272C) Failure to report. Failure to report knowledge of wrongful acts or omissions in accordance with rule 12.1(272C) or 12.2(272C) within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

653—12.4(272C) Additional grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, or 272C or the rules promulgated thereunder. The board may impose any of the disciplinary sanctions set forth in rule 12.33(272C), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses. This rule is not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

12.4(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

12.4(2) Professional incompetency. Professional incompetency includes but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

b. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

c. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa.

12.4(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and includes any representation contrary to the physician's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

b. Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of medical ethics and code of ethics set out in rules 653—13.10(147,148,272C) and 653—13.11(147,148,272C), as interpreted by the board.

c. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

d. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

e. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

12.4(4) Habitual intoxication or addiction to the use of drugs.

(2) The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue and finance guidelines in effect on July 1, 1993.

c. Deposition costs. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition cost includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

12.43(4) *Certification of reimbursable costs.* Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the executive director/designated staff person shall certify any reimbursable costs to the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of the filing.

12.43(5) *Assessment of fees and costs.* A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed $75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. A party shall file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

12.43(6) *Payment of fees and costs.* All fees and costs assessed pursuant to this subrule shall be made in the form of a check or money order made payable to the state of Iowa and delivered by the licensee to the department of public health.

12.43(7) *Failure to make payment.* Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 148 and 272C.

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PROFESSIONAL ETHICS

653—13.10(147,148,272C) Principles of medical ethics. The following principles of medical ethics prepared and approved by the judicial council of the American Medical Association, which are set out in a 1977 publication entitled "Opinions and Reports of the Judicial Council," published by the American Medical Association, 535 North Dearborn Street, Chicago, Illinois 61610, are hereby adopted by the board relative to the practice of medicine and surgery in this state:

13.10(1) These principles are intended to aid physicians individually and collectively in maintaining a high level of ethical conduct. They are not laws but standards by which a physician may determine the propriety of conduct in relationship with patients, with colleagues, with members of allied professions, and with the public.

13.10(2) The principal objective of the medical profession is to render service to humanity with full respect for dignity. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

13.10(3) Physicians should strive continually to improve medical knowledge and skill and should make available to their patients and colleagues the benefits of their professional attainments.

13.10(4) A physician should practice a method of healing founded on a scientific basis; and the physician should not voluntarily associate professionally with anyone who violates this principle.

13.10(5) The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

13.10(6) A physician may choose whom they will serve. In an emergency, however, the physician should render service to the best of their ability. Having undertaken the case of a patient, the physician may not neglect the patient; and unless the patient has been discharged they may discontinue their services only after giving adequate notice. The physician should not solicit patients.

13.10(7) A physician should not dispose of their services under terms or conditions which tend to interfere with or impair the free and complete exercise of their medical judgment and skill or tend to cause a deterioration of the quality of medical care.

13.10(8) In the practice of medicine a physician should limit the source of their professional income to medical services actually rendered by them, or under their supervision to their patients. The physician's fee should be commensurate with the services rendered and the patient's ability to pay. The physician should neither pay nor receive a commission for referral of patients. Drugs, remedies or appliances may be dispensed or supplied by the physician provided it is in the best interest of the patient.

13.10(9) A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical service may be enhanced thereby.

13.10(10) A physician may not reveal the confidences entrusted to them in the course of medical attendance, or the deficiencies they may observe in the character of patients, unless they are required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

13.10(11) The honored ideals of the medical profession imply that the responsibilities of the physician extend not only to the individual, but also to society where these responsibilities deserve the physician's interest and participation in activities which have the purpose of improving both the health and well-being of the individual and the community.

653—13.11(147,148,272C) Code of ethics of osteopathic profession. The following code of ethics published and approved by the American Osteopathic Association and published in a book entitled "1977 American Osteopathic Association Year Book and Director of Osteopathic Physicians," is hereby adopted by the board relative to the practice of osteopathic medicine and surgery or osteopathy in this state:

13.11(1) The physician shall keep in confidence whatever they may learn about a patient in the discharge of professional duties. Information shall be divulged by the physician when required by law or when authorized by the patient.

13.11(2) The physician shall give a candid account of the patient's condition to the patient or to those responsible for the patient's care.

13.11(3) A physician-patient relationship must be founded on mutual trust, cooperation, and respect. The patient, therefore, must have complete freedom to choose their physician. The physician must have complete freedom to choose patients whom they will serve. In emergencies, a physician should make their services available.

13.11(4) The physician shall give due notice to the patient or to those responsible for the patient's care when the physician withdraws from a case so that another physician may be summoned.

13.11(5) A physician is never justified in abandoning a patient.

13.11(6) A physician shall practice in accordance with the body of systematized knowledge related to the healing arts and shall avoid professional association with individuals or organizations which do not practice or conduct organization affairs in accordance with such knowledge.

13.11(7) A physician shall not be identified in any manner with testimonials for proprietary products or devices advertised or sold directly to the public.

13.11(8) A physician shall not hold forth or indicate possession of any degree recognized as the basis for licensure to practice the healing arts unless the physician is actually licensed on the basis of that degree in the state in which he practices.

13.11(9) A physician shall obtain consultation whenever requested to do so by the patient. A physician should not hesitate to seek consultation whenever the physician believes it advisable.

13.11(10) Illegal, unethical or incompetent conduct of physicians shall be revealed to the proper tribunals.

13.11(11) A physician shall not assume treatment of a patient under the care of another physician except in emergencies and only during the time that the attending physician is not available unless requested by the patient.

13.11(12) Any fee charged by a physician shall be reasonable.

13.11(13) A physician shall not pay or receive compensation for referral of patients.

13.11(14) The physician shall cooperate fully in complying with all laws and regulations pertaining to practice of the healing arts and protection of the public health.

Rules 13.10(147,148,272C) and 13.11(147,148,272C) are intended to implement Iowa Code sections 147.55 and 147.76.

653—13.12(17A,147,148,272C) Waiver or variance prohibited. Rules in this chapter are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

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CHAPTER 14
IMPAIRED PHYSICIAN REVIEW COMMITTEE

653—14.1(272C) Impaired physician review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the impaired physician review committee.

653—14.2(272C) Definitions.

"Impaired physician recovery contract" or *"contract"* means the written document establishing the terms for participation in the impaired physician recovery program prepared by the impaired physician review committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychiatric or physical disorder or disability.

"Initial agreement" means the written document establishing the initial terms for participation in the impaired physician recovery program.

"IPRC" or *"committee"* means the impaired physician review committee.

"IPRP" or *"program"* means the impaired physician recovery program.

"Self-report" means the licensee providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

653—14.3(272C) Purpose. The impaired physician review committee evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of physicians who self-report impairments.

653—14.4(272C) Composition of the committee. The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC includes, but is not limited to:

1. Executive director of the board or the director's designee from the board's staff;
2. One physician who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program and board-ordered probation for drug or alcohol dependency, addiction, or abuse;
3. One practitioner with expertise in substance abuse/addiction treatment programs;
4. One physician with expertise in the diagnosis and treatment of neuropsychiatric disorders and disabilities; and
5. One public member.

653—14.5(272C) Eligibility. To be eligible for participation in the impaired physician recovery program, a licensee must self-report an impairment or suspected impairment directly to the office of the board. A licensee is deemed ineligible to participate in the program if the board or committee finds evidence of any of the following:

1. The licensee engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third party or for personal profit or gain;

2. At the time of self-reporting, the licensee is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

3. The licensee has caused harm or injury to a patient;

4. There is currently a board investigation of the licensee that concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

5. The licensee has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of medicine; or

6. The licensee failed to provide truthful information or to fully cooperate with the board or committee.

653—14.6(272C) Type of program. The impaired physician recovery program is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired physician. The committee, in consultation with the licensee and upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's impairment. The committee shall prepare an impaired physician recovery contract, to be signed by the licensee, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's obligations therein.

653—14.7(272C) Terms of participation. A licensee shall agree to comply with the terms for participation in the IPRP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

14.7(1) *Duration.* The length of time a licensee shall participate in the program shall be determined by the committee in accordance with the following:

a. Participation in the program for licensees impaired as a result of chemical dependency or alcohol or substance abuse or addiction is set at a minimum of four years.

b. Length of participation in the program for licensees with impairments resulting from neuropsychiatric or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

14.7(2) *Noncompliance.* A licensee participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the licensee, any person responsible for providing or monitoring treatment, or another party shall result in the following:

a. *First instance.* Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPRC shall make a report to the board that includes recommendations as to whether treatment should be augmented or formal charges should be filed.

b. *Second instance.* Upon receiving notification of a second instance of noncompliance including, but not limited to, a relapse, the IPRC shall nullify the contract and refer the case to the board for the filing of formal charges or other appropriate action.

14.7(3) *Practice restrictions.* The IPRC may impose restrictions on the license to practice medicine as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee shall refer the licensee to the board for appropriate action.

653—14.8(272C) Limitations. The IPRC establishes the terms of and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPRP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of medicine by a participant shall be referred to the board for appropriate action.

653—14.9(272C) Confidentiality. The IPRC is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the IPRP under the auspices of the IPRC is not a matter of public record.

These rules are intended to implement Iowa Code section 272C.3.

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653—16.5(261) Share information. Notwithstanding any statutory confidentiality provision, the board may share information with the commission through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under the Act.

These rules are intended to implement Iowa Code sections 261.121 to 261.127.

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CHAPTER 17
LICENSURE OF ACUPUNCTURISTS

653—17.1(148E) Purpose. The licensure of acupuncturists is established to ensure that practitioners are qualified to provide Iowans with safe and healthful care. The provisions of Iowa Code chapters 147, 148E and 272C authorize the board of medical examiners to establish examination requirements for licensure; evaluate the credentials of applicants for licensure (147.2, 148E.3); grant licenses to qualified applicants (148E.2); institute continuing education requirements (272C.2); investigate complaints and reports alleging that licensed acupuncturists violated statutes and rules governing the practice of acupuncture (147.55, 148E.6); and discipline licensed acupuncturists found guilty of infractions as provided in state law and board rules (147.55, 148E.6).

653—17.2(148E) Licensure exceptions. In accordance with Iowa Code section 148E.3, the following rules govern those persons engaged in the practice of acupuncture not otherwise licensed by the state to practice medicine and surgery, osteopathy, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board as one that leads to eligibility for licensure is not required to obtain a license.

653—17.3(148E) Definitions.

"Acupuncture" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Applicant" means a person not otherwise authorized to practice acupuncture under Iowa Code section 148E.3 who applies to the board for a license.

"Board" means the board of medical examiners established in Iowa Code chapter 147.

"Committee" means the license and examination committee of the board with oversight responsibility for administration of the licensure of acupuncturists.

"Current registrant" means a person who is registered to practice acupuncture in Iowa and who submits an application for licensure within 60 days of receiving an application from the board by certified mail. A current registrant may practice acupuncture in Iowa until the board issues or denies a license.

"Department" means the Iowa department of public health.

"Disclosure sheet" means the written information licensed acupuncturists must provide to patients on initial contact.

"Disposable needles" means presterilized needles that are discarded after initial use pursuant to Iowa Code section 148E.5.

"English proficiency" means sufficient knowledge of the English language as evidenced by achieving a passing score on one of the following examinations:

1. TOEFL, the Test of English as a Foreign Language administered by the Educational Testing Service.
2. TOEIC, the Test of English for International Communication administered by the Educational Testing Service.
3. TSE, the Test of Spoken English administered by the Educational Testing Service.

"Former registrant" means a person whose acupuncture registration has lapsed or a person who did not apply for licensure within 60 days of receiving an application from the board by certified mail. A former registrant is not in good standing to practice acupuncture in Iowa.

"License" means a license issued by the board pursuant to Iowa Code section 148E.2.

"Licensed acupuncturist" or *"licensee"* means a person holding a license to practice acupuncture granted by the board under the provisions of Iowa Code chapter 148E.

"National Commission for the Certification of Acupuncturists" means the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).

"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

"Professional development activity (PDA)" means any activity for the purpose of continuing a person's education that is defined and approved by NCCAOM. One PDA point equals one hour of continuing education.

653—17.4(147,148E) Eligibility for licensure.

17.4(1) *Eligibility requirements for those who apply after July 1, 2001.* To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

a. Fulfill all the application requirements, as specified in 17.5(147,148E).

b. Hold current active status as a diplomate in NCCAOM.

c. Demonstrate sufficient knowledge of the English language to understand and be understood by patients and board and committee members.

(1) An applicant who passed the NCCAOM written and practical examination components in English may be presumed to have sufficient proficiency in English.

(2) The board may, at the recommendation of the committee, choose any of the following examinations to test the English proficiency of any applicant: TOEFL, TOEIC, or TSE.

d. Successfully complete a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the standards of, the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

e. Successfully complete a course in clean needle technique approved by the NCCAOM.

17.4(2) *Eligibility requirements for current registrants.* To continue practicing and to be licensed to practice acupuncture by the board, a registrant shall meet all of the following requirements within 60 days of receiving the application by certified mail:

a. Fulfill all the application requirements, as specified in 17.5(147,148E).

b. Provide documented evidence of current active status as a diplomate in NCCAOM.

c. Provide documented evidence of successful completion of a course in clean needle technique approved by NCCAOM.

17.4(3) *Eligibility requirements for former registrants who apply before July 1, 2001.* To be licensed to practice acupuncture by the board, a former registrant shall meet all of the following requirements by July 1, 2001:

a. Fulfill all the application requirements, as specified in 17.5(147,148E).

b. Provide documented evidence of current active status as a diplomate in NCCAOM.

c. Provide documented evidence of successful completion of a course in clean needle technique approved by NCCAOM.

d. Refrain from practice until a license is issued.

17.4(4) *Eligibility requirements for individuals who apply before July 1, 2001, and who have not been registrants.* To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

a. Fulfill all the application requirements, as specified in 17.5(147,148E).

b. Provide documented evidence of current active status as a diplomate in NCCAOM.

c. Provide documented evidence of successful completion of an acupuncture degree program approved by the board or an apprenticeship or tutorial program approved by the board.

d. Demonstrate sufficient knowledge of the English language to understand and be understood by patients and board and committee members.

(1) An applicant who passed the NCCAOM written and practical examination components in English may be presumed to have sufficient proficiency in English.

(2) The board may, at the recommendation of the committee, choose any of the following examinations to test the English proficiency of any applicant: TOEFL, TOEIC, or TSE.

e. Provide documented evidence of successful completion of a course in clean needle technique approved by the NCCAOM.

17.4(5) *Eligibility time limits.* Registrants have a limited time in which to become licensees.

a. Current registrants shall submit a completed application showing compliance with these eligibility requirements within 60 days of receiving the application by certified mail in order to continue practicing. A current registrant who fails to submit an application for licensure in this period shall cease practice by October 31, 2000.

(1) The board shall determine within 30 days of receiving an application for licensure if the current registrant meets the requirements in 17.4(147,148E) and 17.5(147,148E).

(2) If the current registrant meets the requirements in 17.4(147,148E) and 17.5(147,148E), the board shall issue a license that will expire October 31, 2002, and the registration is no longer valid.

(3) If the current registrant does not meet the requirements in 17.4(147,148E) and 17.5(147,148E), the board shall deny the license and shall invalidate the acupuncture registration. The individual may no longer practice acupuncture in Iowa after November 15, 2000.

(4) Current registrants who do not apply in the 60-day period must discontinue practice until they submit an application and the board approves them for licensure.

b. Former registrants shall be eligible for licensure if they submit a completed application showing compliance with 17.4(147,148E) and 17.5(147,148E) by July 1, 2001.

(1) Former registrants shall not practice acupuncture until the board issues an acupuncture license.

(2) The board shall determine within 30 days of receiving an application for licensure if the former registrant meets the requirements in 17.4(147,148E) and 17.5(147,148E). If so, the board shall issue the license to practice acupuncture.

(3) If the former registrant does not meet the requirements in 17.4(147,148E) and 17.5(147,148E), the board shall deny the license.

c. A registrant who does not qualify for licensure by July 1, 2001, shall meet the new requirements for licensure.

17.4(6) *Waiver or variance prohibited.* Provisions of this rule are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

653—17.5(147,148E) Application requirements.

17.5(1) *Application required.* All registered acupuncturists shall apply for a license within 60 days of receiving an application by certified mail. Failure to apply for licensure in that time frame shall deem the registration invalid and the individual no longer qualified to practice acupuncture in Iowa.

17.5(2) *Application for licensure.* To apply for a license to practice acupuncture, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents; and

b. Pay a nonrefundable initial application fee of $300.

(1) For current registrants, the fee to become licensed is prorated based on the expiration date of the individual's registration. The board shall notify each registrant of the nonrefundable application fee when the board sends the application by certified mail.

(2) For former registrants, the fee to become licensed is a nonrefundable application fee of $300.

17.5(3) *Contents of the application form.* Each applicant, other than current registrants, shall submit the following information on the application form provided by the board:

a. The applicant's name, date and place of birth, and home address, mailing address and principal business address;

b. A photograph of the applicant suitable for positive identification;

c. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice acupuncture, including license, certificate of registration or certification numbers, date of issuance, and an explanation indicating the basis upon which authorization to practice acupuncture was received;

d. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories;

e. Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories;

f. The NCCAOM score report verification form submitted directly to the board by the NCCAOM;

g. An official statement from NCCAOM that the applicant holds active status as a diplomate in NCCAOM;

h. An official statement showing successful completion of a course in clean needle technique approved by the NCCAOM;

i. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

j. A description of the applicant's clinical acupuncture training, work experience and, where applicable, supporting documentation;

k. An official transcript sent directly from the institution of higher education or acupuncture school attended by the applicant and, if necessary, an English translation of the official transcript;

l. Proof of the applicant's proficiency in the English language, when the applicant has not passed the English version of the NCCAOM written and practical examinations; and

m. A copy of the disclosure sheet to be used in practice, as described in 17.5(5).

17.5(4) *Contents of the application form for current registrants.* Each current registrant shall submit the following information on the application form provided by the board:

a. The applicant's name, home address, mailing address and principal business address;

b. Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories;

c. Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories;

d. An official statement from NCCAOM that the registrant holds active status as a diplomate in NCCAOM;

e. An official statement showing successful completion of a course in clean needle technique approved by the NCCAOM;

f. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

g. A description of the applicant's work experience in the past five years and, where applicable, supporting documentation; and

h. A copy of the disclosure sheet used in practice, as described in 17.5(5).

17.5(5) *Disclosure sheet.* Pursuant to Iowa Code section 148E.6, applicants shall also provide a copy of the disclosure sheet to be given to each patient that includes the following information:

a. The name, business address and business telephone number of the acupuncturist;

b. A fee schedule;

c. A listing of the acupuncturist's education, experience, degrees, certificates, or other credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain degrees or credentials, and experience;

d. A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency;

e. A statement that the acupuncturist is complying with statutes and with rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist;

f. A statement that the practice of acupuncture is regulated by the board; and

g. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state, and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

17.5(6) *Application cycle.* Applications for initial licensure, except for current registrants, shall be open for 120 days from the date the application form is received in the board's office.

a. After the 120 days, applicants shall update credentials and submit a nonrefundable reactivation of application fee of $100 unless granted an extension in writing by the committee or the board. The period for requesting reactivation of the application is limited to one year from the date the application form is received by the board.

b. Once the application reactivation period is expired, applicants must reapply and submit a new, nonrefundable initial application fee of $300.

17.5(7) *Applicant responsibilities.* An applicant for licensure to practice acupuncture bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information specified in 17.5(3);

b. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under 17.5(3) and 17.5(4) related to prior professional experience, education, training, examination scores, diplomate status, licensure or registration, and disciplinary history; and

c. Submitting English translations of documents in foreign languages bearing the affidavit of the translator certifying that the translation is a true and complete translation of the foreign language original. The applicant shall bear the expense of the translation.

17.5(8) *Board responsibilities.* The board staff shall review new applications within two weeks of submission of all requested materials. If the individual clearly meets all of the requirements, staff may issue the license. If staff has any concern about the application, it shall be referred to committee at its next meeting. If the committee resolves the concern, staff may issue the license. If the committee recommends denial, the application will be referred to the board.

17.5(9) *Grounds for denial of application.* The board, on the recommendation of the committee, may deny an application for licensure for any of the following reasons:

a. Failure to meet the requirements for licensure specified in rule 653—17.4(147,148E) as authorized by Iowa Code section 148E.2 or of this chapter of the board's rules.

b. Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55 and 148E.8 or in rule 653—17.12(147,148E,272C).

17.5(10) *Waiver or variance prohibited.* Provisions of this rule are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

653—17.6(147,148E) Display of license and disclosure of information to patients.

17.6(1) *Display of license.* Licensed acupuncturists shall display the license issued by the board in a conspicuous place in their primary place of business.

17.6(2) *Approval of the disclosure sheet and time limit for revisions.* Pursuant to Iowa Code section 148E.6, upon issuing a license, the board shall provide notification to the licensee of the approval or rejection of the disclosure sheet to be provided to patients on initial contact submitted subsequent to 17.5(4)*"m."*

a. If rejected, the board shall provide the licensee with a written statement explaining the reasons for rejecting the disclosure sheet submitted and indicating the necessary amendments or revisions.

b. Upon receiving the rejection, the licensee shall submit within 14 days a revised mandatory disclosure sheet to the board for its approval.

17.6(3) *Distribution and retention of disclosure sheet.* The licensee shall distribute the disclosure sheet on initial contact with patients and retain a copy, signed and dated by the patient, for a period of at least five years after termination of the treatment.

653—17.7(147,148E,272C) Biennial renewal of license required. Pursuant to Iowa Code section 148E.2, a license is renewed every two years on November 1 for a fee of $300 with documented evidence that the licensee has completed the 30 hours of continuing education required by the board. Renewal shall require evidence of current active status as a diplomate in the National Commission for the Certification of Acupuncturists.

17.7(1) *Expiration date.* Certificates of licensure to practice acupuncture shall expire on October 31 in even years. Those who are granted a license prior to October 31, 2000, shall receive a license that expires October 31, 2002.

17.7(2) *Prorated fees.* The renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

17.7(3) *Renewal requirements and penalties for late renewal.* Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date.

a. Pursuant to Iowa Code section 147.10, application for renewal shall be made in writing to the board accompanied by the required fee at least 30 days prior to the expiration date.

b. Every renewal shall be displayed in connection with the original certificate of licensure.

c. A $50 penalty shall be assessed for renewal in the grace period, a period up until January 1 when the license lapses if not renewed.

17.7(4) *Lapsed license.* Failure of a licensee to renew by January 1 will result in invalidation of the license and the license will become lapsed.

a. Licensees are prohibited from engaging in the practice of acupuncture once the license is lapsed.

b. Having an acupuncturist license in lapsed status does not preclude the board from taking disciplinary actions authorized in Iowa Code section 147.55 or 148E.8.

653—17.8(147,272C) Reinstatement of a lapsed license.

17.8(1) *Reinstatement requirements.* Licensees who allow their licenses to lapse by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit a completed application for reinstatement of a license to practice acupuncture that includes:

(1) The applicant's name, home address, mailing address, and principal business address.

(2) Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories.

(3) Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories.

(4) A practice history for the period of the lapsed license.

b. Pay $400.

c. Provide evidence of successful completion of 60 PDA points.

d. Provide an official statement from NCCAOM that the applicant holds current active status as a diplomate of NCCAOM.

e. Meet any new requirements instituted since the license lapsed.

17.8(2) *Reinstatement restrictions.* Pursuant to Iowa Code section 272C.3(2)"*d,*" the committee may require a licensee who fails to renew for a period of three years from the expiration date to meet any or all of the following requirements prior to reinstatement of a lapsed license:

a. Provide a written statement explaining the reasons for failing to renew;

b. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

c. Appear before the committee or board for an interview.

653—17.9(272C) Continuing education requirements—course approval. Pursuant to Iowa Code section 272C.2, a person licensed to practice acupuncture shall complete 30 PDA points to qualify for license renewal.

1. A licensee may earn from 1 to 15 extra PDA points in a license period that may be carried over for credit in the next license period. A licensee desiring to obtain credit for carryover hours shall report the carryover credit on the renewal application when the credit was earned.

2. It is the responsibility of each licensee to finance the costs of the licensee's PDA points.

653—17.10(147,148E,272C) General provisions.

17.10(1) *Use and disposal of needles.* A licensee shall use only presterilized, disposable needles and shall provide for the disposal of used needles in accordance with the requirements of the department.

17.10(2) *Standard of care.* A licensee shall be held to the same standard of care as persons licensed to practice medicine and surgery, osteopathy, and osteopathic medicine and surgery. Pursuant to Iowa Code section 272C.3, any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care in the practice of acupuncture constitutes malpractice and is grounds for the revocation or suspension of a license to practice acupuncture in this state.

17.10(3) *Title.* An acupuncturist licensed under this title may use the words "licensed acupuncturist" or "L.Ac." to connote professional standing after the licensee's name in accordance with Iowa Code section 147.74(18).

17.10(4) *Change of residence.* In accordance with Iowa Code section 147.9, licensees shall notify the board of changes in residence and place of practice within 14 days of moving.

17.10(5) *Delegation of responsibilities prohibited.* The licensee shall perform all aspects of acupuncture treatment on a patient. Delegation of responsibility for acupuncture treatment is strictly prohibited.

653—17.11(147,148E,272C) General disciplinary provisions. The board is authorized to take disciplinary action against any licensee who violates the provisions set forth in state law and administrative rules pertaining to the safe and healthful practice of acupuncture. This rule is not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

17.11(1) *Methods of discipline.* The board may impose any of the following disciplinary sanctions:

a. Revocation of a license;

b. Suspension of a license until further order of the board;

c. Nonrenewal of a license;

d. Restrict permanently or temporarily the performance of specific procedures, methods, acts or techniques;

e. Probation;

f. Additional or remedial education or training;

g. Reexamination;

h. Medical or physical evaluation, or alcohol or drug screening within a specific time frame at a facility or by a practitioner of the board's choice;

i. Civil penalties not to exceed $1,000;

j. Citations and warnings as necessary; and

k. Other sanctions allowed by law as deemed appropriate.

17.11(2) *Discretion of the board.* The board may consider the following factors when determining the nature and severity of the disciplinary sanction to be imposed:

a. The relative seriousness of the violation as it relates to assuring the citizens of Iowa a high standard of professional care.

b. The facts of the particular violation.

c. Any extenuating circumstances or other countervailing considerations.

d. Number of prior violations or complaints.

e. Seriousness of prior violations or complaints.

f. Whether remedial action has been taken.

g. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

653—17.12(147,148E,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in 17.11(1) upon determining that a licensee is guilty of any of the following acts or offenses:

17.12(1) *Fraud in procuring a license.* Fraud in procuring a license is the deliberate distortion of facts or use of deceptive tactics in the application for licensure to practice acupuncture including, but not limited to:

a. Making false or misleading statements in obtaining or seeking to obtain licensure;

b. Failing to disclose by deliberate omission or concealment any information the board deems relevant to the safe and healthful practice of acupuncture pursuant to Iowa Code chapters 147 and 148E;

c. Misrepresenting any fact or deed to meet the application or eligibility requirements established by this chapter; or

d. Filing or attempting to file a false, forged or altered diploma, certificate, affidavit, translated or other official or certified document, including the application form, attesting to the applicant's eligibility for licensure to practice acupuncture in Iowa.

17.12(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

a. Substantial lack of knowledge or ability to discharge professional obligations within the scope of the acupuncturist's practice;

b. Substantial deviation by the licensee from the standards of learning or skill ordinarily possessed and applied by other acupuncturists when acting in the same or similar circumstances;

c. Failure by an acupuncturist to exercise in a substantial respect the degree of care which is ordinarily exercised by the average acupuncturist when acting in the same or similar circumstances; or

d. Willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of acupuncture.

17.12(3) *Fraud in the practice of acupuncture.* Fraud in the practice of acupuncture includes, but is not limited to, any misleading, deceptive, untrue or fraudulent representation in the practice of acupuncture, made orally or in writing, that is contrary to the acupuncturist's legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare, and potentially injurious to another. Proof of actual injury need not be established.

17.12(4) *Unethical conduct.* Unethical conduct in the practice of acupuncture includes, but is not limited to:

a. Failing to provide patients with the information required in Iowa Code section 148E.6 or providing false information to patients;

b. Accepting remuneration for referral of patients to other health care professionals;

c. Offering or providing remuneration for the referral of patients, excluding paid advertisements or marketing services;

d. Engaging in sexual activity or genital contact with a patient while acting or purporting to act within the scope of the acupuncture practice, whether or not the patient consented to the sexual activity or genital contact;

e. Disclosing confidential information about a patient without proper authorization; or

f. Abrogating the boundaries of acceptable conduct in the practice of acupuncture established by the profession that the board deems appropriate for ensuring that acupuncturists provide Iowans with safe and healthful care.

17.12(5) *Practice harmful to the public.* Practice harmful or detrimental to the public in the practice of acupuncture includes, but is not limited to:

a. Failing to possess and exercise the degree of skill, learning and care expected of a reasonable, prudent acupuncturist acting in the same or similar circumstances;

b. Practicing acupuncture without reasonable skill and safety as the result of a mental or physical impairment, chemical abuse or chemical dependency;

c. Prescribing, dispensing or administering any controlled substance or prescription medication for human use; or

d. Performing any treatment or healing procedure not authorized in Iowa Code chapter 148E or this chapter.

17.12(6) *Habitual intoxication or addiction.* Habitual intoxication or addiction to the use of drugs includes, but is not limited to, the inability to practice acupuncture with reasonable skill and safety as a result of the excessive use of alcohol, drugs, narcotics, chemicals or other substances on a continuing basis, or the excessive use of the same in a way which may impair the ability to practice acupuncture with reasonable skill and safety.

17.12(7) *Felony conviction.* A felony conviction related to the practice of acupuncture or that affects the ability to practice the profession includes, but is not limited to:

a. Any conviction for any public offense directly related to or associated with the practice of acupuncture that is classified as a felony under the statutes of any jurisdiction of the United States, the United States government, or another nation or its political subdivisions; or

b. Any conviction for a public offense affecting the ability to practice acupuncture that is classified as a felony under the statutes of any jurisdiction of the United States, the United States government, or another nation or its political subdivisions and that involves moral turpitude, civility, honesty, or morals.

A copy of the record of conviction or plea of guilty or nolo contendere shall be conclusive evidence of the felony conviction.

17.12(8) *Misrepresentation of scope of practice by licensees.* Misrepresentation of a licensee's scope of practice includes, but is not limited to, misleading, deceptive or untrue representations about competency, education, training or skill as a licensed acupuncturist or the ability to perform services not authorized under this chapter.

17.12(9) *False advertising.* False advertising is the use of fraudulent, deceptive or improbable statements in information provided to the public. False advertising includes, but is not limited to:

a. Unsubstantiated claims about the licensee's skills or abilities, the healing properties of acupuncture or specific techniques or treatments therein;

b. Presenting words, phrases, or figures which are misleading or likely to be misunderstood by the average person; or

c. Claiming extraordinary skills that are not recognized by the acupuncture profession.

17.12(10) *General grounds.* The board may also take disciplinary action against an acupuncturist for any of the following reasons:

a. Failure to comply with the provisions of Iowa Code chapter 148E or the applicable provisions of Iowa Code chapter 147, or the failure of an acupuncturist to comply with rules adopted by the board pursuant to Iowa Code chapter 148E;

b. Failure to notify the board of any adverse judgment or settlement of a malpractice claim or action within 30 days of the date of the judgment or settlement;

c. Failure to report to the board any acts or omissions of another acupuncturist authorized to practice in Iowa that would constitute grounds for discipline under 17.12(147,148E,272C) within 30 days of the date the acupuncturist initially became aware of the information;

d. Failure to comply with a subpoena issued by the board;

e. Knowingly submitting a false report of continuing education or failing to submit a required continuing education report;

f. Failure to adhere to the disciplinary sanctions imposed upon the acupuncturist by the board; or

g. Violating any of the grounds for revocation or suspension of licensure listed in Iowa Code chapter 147 or 148E.

653—17.13(272C) Procedure for peer review. Rule 653—12.7(272C) shall apply to peer review procedures in matters related to licensed acupuncturists.

653—17.14(272C) Reporting duties and investigation of reports. Rules 653—12.1(272C) to 12.3(272C) and 12.5(272C) shall apply to certain reporting responsibilities of licensed acupuncturists and the investigation of malpractice cases involving licensed acupuncturists.

653—17.15(272C) Complaints, immunities and privileged communications. Rule 653—12.5 (17A,147,148,272C) shall apply to matters relating to licensed acupuncturists.

653—17.16(272C) Confidentiality of investigative files. Rule 653—12.10(272C) shall apply to investigative files relating to licensed acupuncturists.

653—17.17 to **17.28** Reserved.

653—17.29(17A,147,148E,272C) Disciplinary procedures. Rules 653—12.11(17A) to 12.43 (272C) shall apply to disciplinary actions against licensed acupuncturists.

653—17.30(147,148E,272C) Waiver or variance prohibited. Fees in this chapter are not subject to waiver or variance pursuant to IAC 653—Chapter 3 or any other provision of law.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.20, 147.55, 272C.3 to 272C.6, 272C.8 and 272C.9 and Iowa Code chapter 148E as amended by 2000 Iowa Acts, chapter 1053.

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CHAPTERS 18 and 19
Reserved

CHAPTER 20
PHYSICIAN'S ASSISTANTS
Rescinded IAB 11/14/90, effective 10/25/90
See 645—Chapter 325

◊ Two ARCs

661—2.7(80A) License fee. A fee of $100 must accompany each application for a bail enforcement, private investigative or private security license. Upon approval of the application, the money shall be applied to the license fee, but if disapproved, the entire amount deposited shall be refunded to the applicant.

661—2.8(80A) Display of license. Immediately upon receipt of the license issued by the department, the licensee named therein shall cause such license to be posted and at all times displayed in a conspicuous place in the licensee's principal place of business within the state, so that all persons visiting such place may readily see it. If there is more than one place of business, then there shall be a copy of the original license issued by the department posted in every such place of business which is located in Iowa, and in a county contiguous to the state of Iowa. The licensee shall notify the commissioner of each location where a copy of the license is posted. If the licensee has no office in the state of Iowa, the licensee shall post the license at the principal place of business and notify the commissioner of the address where such license is posted. Such license shall at all reasonable times be subject to inspection by the commissioner. It shall be unlawful for any person holding such license to post such license or to permit such license to be posted upon premises other than those authorized therein. Every license, and each copy thereof, shall be surrendered to the department within seven days after written notice to the holder that such license has been revoked. Failure to comply with any of the provisions of this rule is sufficient cause for the revocation of the license.

661—2.9(80A) Duplicate license. The commissioner shall issue a duplicate license upon the payment of $5 and upon receiving a written statement that the original license has been lost, destroyed, stolen or otherwise rendered useless, and that if the original license is recovered, the original or the duplicate will be returned immediately to the department.

661—2.10(80A) License renewal. Each applicant for a license renewal must execute Form #PD3 provided by the department. This form must be submitted to the commissioner not less than 30 days prior to expiration of the applicant's current license and is not required to be processed unless complete. In order to be complete, the applicant must satisfy the bail enforcement, private investigation and private security rules 661—2.4(80A), 661—2.5(80A), and 661—2.7(80A), and for license renewals after July 1, 1999, 661—2.22(80A). The reference date for any deadline enumerated in these rules will be determined by the postmark on the piece of mail.

In no event will a renewal license be granted if the application for renewal is received more than 30 days after the expiration date of the existing license.

Upon the passage of 30 days subsequent to the expiration date, the license will become invalid, and if the former licensee wishes to continue the bail enforcement, private investigative or private security business, the former licensee must reapply as if the former licensee were making an initial application.

Upon satisfying all the pertinent rules, the applicant's license remains valid until the applicant receives a renewal license or a notification that the license will not be renewed.

661—2.11(80A) Identification (ID) cards. Upon the issuance of a license, a pocket ID card of the following content shall be issued by the commissioner.

Full legal name	Color of eyes
Date of birth	Licensee's name
Address	Type of business
Sex	License number
Height	Date of issuance
Weight	
Hair color	
1″ × 1″ color photo	

This ID card is invalid without the commissioner's signature and the department's seal embossed on it. The ID card shall be evidence that the holder is duly licensed, and the holder shall have this card in the holder's possession at all times when the holder is within the scope of employment. Failure to do so may result in suspension or revocation of the ID card or the licensee's license. This ID card shall remain the department's property. When any person to whom a card is issued terminates the person's position for any reason, the card must be surrendered to the commissioner within seven days. In the event of loss, destruction, or theft of this card, the licensee shall report (to the commissioner) in writing the circumstances surrounding the loss, destruction, or theft within five days of such discovery. The fee for each original, temporary, replacement or renewal ID card is $10. If the agency license has been terminated or revoked, the agency must return the license and all ID cards to the commissioner within seven days. The penalty for any knowing or willful misconduct in the use of the ID card may be suspension or revocation of the ID card or the licensee's license, depending on the nature and degree of the misconduct.

2.11(1) *Temporary ID cards.* The Identification Card Application For: Private Investigator/Private Security Guard/Bail Enforcement Agent, Form #PD2, shall contain a temporary identification card that shall be valid for 14 calendar days from the date of issuance. This temporary identification card shall be issued to new employees of a licensee so that the requirement that employees have in their possession a valid identification card may be met while the application for a permanent identification card is being processed.

2.11(2) *Display of ID cards.* Whenever the cardholder is within the holder's scope of employment and is requested to produce some identification, the holder shall promptly comply by displaying the issued ID card, unless compliance would put the cardholder or another in immediate danger or jeopardize the investigation. The cardholder shall permit the requesting person to reasonably examine the ID card and write down any information contained therein. Failure to comply may result in suspension or revocation of the ID card or license.

661—2.12(80A) Badges, uniforms, insignia and equipment. No badges, uniforms, or insignia will be approved for private investigative or bail enforcement agents. No holder of a license or ID card while performing the duties of a private security guard shall wear any uniform, or wear, display, or likewise use any badge, insignia, device, shield, or the like, without the prior written approval of such by the commissioner.

The commissioner will not approve any item subject to this rule if in the commissioner's opinion it would cause a person to confuse the operation of the licensed business with that of a law enforcement agency.

Metal badges will be approved only for private security as a part of an approved uniform. No badge will be approved which contains the word or words "police", "officer", "policeman", or "enforcement", or the Great Seal of the State of Iowa.

10. Public records availability/access.
11. Report writing.
12. Substance abuse in the workplace.
13. Surveillance techniques.
14. Wage and hour law.
15. Workers' compensation law.

Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to the licensee's professional competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the licensee.

d. Formal correspondence and formal individual study programs contributing directly to the professional competence of an individual which require registration and provide evidence of satisfactory completion will be considered for credit. The amount of credit to be allowed for correspondence and formal individual study programs is to be recommended by the program sponsor and shall not exceed 50 percent of the continuing education requirement.

e. The right is specifically reserved to the commissioner to approve or disapprove credit for continuing education claimed under these rules.

2.22(5) *Controls and reporting.*

a. Applicants for license renewal must provide a signed statement, under penalty of perjury, on forms provided by the department, setting forth the continuing education in which the licensee and the licensee's employees have participated in such manner and at such times as prescribed by the commissioner. This information may include:

1. School, firm or organization conducting the course.
2. Location of course.
3. Title of course and description of content.
4. Principal instructor.
5. Dates attended.
6. Hours claimed.

b. The commissioner may require sponsors of courses to furnish attendance lists or any other information the commissioner deems essential for administration of these continuing education rules.

c. The commissioner will verify on a test basis information submitted by licensees. If an application for license renewal is not approved, the applicant will be so notified and may be granted a period of time by the commissioner in which to correct the deficiencies noted.

d. Primary responsibility for documenting the requirements rests with the licensee and evidence to support fulfillment of those requirements must be retained for a period of three years subsequent to submission of the report claiming the credit. Satisfaction of the requirements, including retention of attendance records and written course outlines, may be accomplished as follows:

(1) For courses taken for scholastic credit in accredited universities and colleges or high school districts, evidence of satisfactory completion of the course will be sufficient. For noncredit courses taken, a statement of the hours of attendance, signed by the instructor, must be obtained by the permit holder.

(2) For correspondence and formal independent study courses, written evidence of completion must be obtained by the licensee.

(3) In all other instances, the licensee must maintain a record of the information listed in subrule 2.22(4) and a copy of the course outline prepared by the course sponsor.

These rules are intended to implement Iowa Code chapters 80A and 252J.

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PHARMACISTS AND PHARMACY

*Rules **645**—chs 6–17 apply to all professional licensure boards

PHYSICAL/OCCUPATIONAL THERAPISTS (cont'd)
Physical therapists

*Rules **645**—chs 6–17 apply to all professional licensure boards

PHYSICIANS AND SURGEONS (cont'd)
Licenses