

**Senate File 379 - Introduced**

SENATE FILE 379  
BY COMMITTEE ON STATE  
GOVERNMENT

(SUCCESSOR TO SSB 1085)

**A BILL FOR**

1 An Act relating to disciplinary procedures before the board of  
2 medicine and providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 148.2A, subsection 2, paragraph e,  
2 subparagraphs (3) and (4), Code 2013, are amended to read as  
3 follows:

4 (3) ~~The majority of a~~ At least half of the members of a  
5 hearing panel containing alternate members shall be current  
6 members of the board.

7 (4) ~~The majority of a~~ At least half of the members of a  
8 hearing panel containing alternate members shall be licensed  
9 to practice under this chapter.

10 Sec. 2. Section 148.6, subsection 1, Code 2013, is amended  
11 to read as follows:

12 1. The board, after due notice and hearing in accordance  
13 with chapter 17A, may issue an order to discipline a licensee  
14 for any of the grounds set forth in section 147.55, chapter  
15 272C, or this ~~subsection~~ section. Notwithstanding section  
16 272C.3, licensee discipline may include a civil penalty not  
17 to exceed ten thousand dollars for each separate and distinct  
18 violation of the laws and rules governing the practice of  
19 medicine up to a maximum of fifty thousand dollars per case.

20 Sec. 3. Section 148.7, Code 2013, is amended to read as  
21 follows:

22 **148.7 Procedure for licensee discipline.**

23 A proceeding for the revocation or suspension of a license  
24 to practice medicine and surgery or osteopathic medicine and  
25 surgery, or acupuncture or to discipline a person licensed  
26 to practice medicine and surgery or osteopathic medicine and  
27 surgery, or acupuncture shall be substantially in accord with  
28 the following procedure and with section 272C.6, subsection  
29 4, to the extent the provisions in that subsection are not  
30 inconsistent with this section:

31 1. The board may, upon its own motion or upon receipt of  
32 a complaint ~~in writing~~, order an investigation. The board  
33 may, upon its own motion, order a hearing. A written notice  
34 of the time and place of the hearing together with a statement  
35 of the charges shall be served upon the licensee at least ten

1 days before the hearing in the manner required for the service  
2 of notice of the commencement of an ordinary action or by  
3 restricted certified mail.

4 2. If the whereabouts of the licensee is unknown, service  
5 may be had by publication as provided in the rules of civil  
6 procedure upon filing the affidavit required by the rules.  
7 In case the licensee fails to appear, either in person or  
8 by counsel at the time and place designated in the notice,  
9 the board shall proceed with the hearing as provided in this  
10 section.

11 ~~3. a. The hearing shall be before a member or members~~  
12 ~~designated by the board or before an administrative law~~  
13 ~~judge appointed by the board according to the requirements of~~  
14 ~~section 17A.11, subsection 1. The presiding board member or~~  
15 ~~administrative law judge may issue subpoenas, administer oaths,~~  
16 ~~and take or cause depositions to be taken in connection with~~  
17 ~~the hearing. The presiding board member or administrative law~~  
18 ~~judge shall issue subpoenas at the request and on behalf of the~~  
19 ~~licensee.~~

20 ~~b. The administrative law judge shall be an attorney vested~~  
21 ~~with full authority of the board to schedule and conduct~~  
22 ~~hearings. The administrative law judge shall prepare and file~~  
23 ~~with the board the administrative law judge's findings of~~  
24 ~~fact and conclusions of law, together with a complete written~~  
25 ~~transcript of all testimony and evidence introduced at the~~  
26 ~~hearing and all exhibits, pleas, motions, objections, and~~  
27 ~~rulings of the administrative law judge.~~

28 3. At the sole discretion of the board, a disciplinary  
29 hearing shall be held before one of the following:

30 a. A quorum of the board. A quorum of the board shall  
31 include not less than six members, at least half of whom are  
32 current board members, and the remaining alternate members  
33 appointed pursuant to section 148.2A, with no more than half of  
34 the quorum being public members.

35 b. A panel of not less than three board members, at least

1 two of whom are licensed in the profession.

2 c. A panel of not less than three specialists appointed  
3 pursuant to section 272C.6, subsection 2.

4 d. An administrative law judge. The decision to assign  
5 an administrative law judge shall be within the sole  
6 discretion of the board. The board may only assign cases to  
7 an administrative law judge to serve as the presiding officer  
8 at hearing that involve allegations of one or more violations  
9 of the laws or rules governing the practice of medicine which  
10 do not involve a standard of medical care determination,  
11 professional practice, medical ethics, sexual misconduct, or  
12 impairment. The board may assign cases involving issues of  
13 law and administrative violations including but not limited  
14 to violations of a board order, violations of an initial  
15 agreement or contract entered into with the Iowa physician  
16 health committee, disciplinary action by another licensing  
17 board or regulatory authority, and criminal convictions. The  
18 board shall define by rule those cases which may be assigned  
19 to an administrative law judge, and the process for using  
20 an administrative law judge as the presiding officer. The  
21 administrative law judge shall be assigned by the division of  
22 administrative hearings pursuant to section 10A.801, and shall  
23 be vested with full authority of the board to schedule and  
24 conduct hearings.

25 ~~4. Disciplinary hearings held pursuant to section 272C.6,~~  
26 ~~subsection 1, shall be heard by the board, or by a panel of~~  
27 ~~not less than six members, at least three of whom are board~~  
28 ~~members, and the remaining appointed pursuant to section~~  
29 ~~148.2A, with no more than three of the six being public~~  
30 ~~members. Notwithstanding chapters 17A and 21, a disciplinary~~  
31 ~~hearing shall be open to the public at the discretion of the~~  
32 ~~licensee.~~

33 5. The presiding officer may issue subpoenas, administer  
34 oaths, and take or cause depositions to be taken in connection  
35 with the hearing. The presiding officer shall issue subpoenas

1 at the request and on behalf of the parties. If a person  
2 refuses to obey a subpoena issued by the presiding officer or  
3 to answer a proper question during the hearing, the presiding  
4 officer may invoke the aid of the district court in requiring  
5 the attendance and testimony of a person or the production  
6 of papers. A failure to obey the order of the court may be  
7 punished by the court as a civil contempt.

8 5. 6. A record of the proceedings shall be kept. The  
9 licensee shall have the opportunity to appear personally and  
10 by an attorney, with the right to produce evidence on the  
11 licensee's own behalf, to examine and cross-examine witnesses,  
12 and to examine documentary evidence produced against the  
13 licensee.

14 ~~6. If a person refuses to obey a subpoena issued by the~~  
15 ~~presiding member or administrative law judge or to answer a~~  
16 ~~proper question during the hearing, the presiding member or~~  
17 ~~administrative law judge may invoke the aid of a court of~~  
18 ~~competent jurisdiction or judge of this court in requiring~~  
19 ~~the attendance and testimony of the person and the production~~  
20 ~~of papers. A failure to obey the order of the court may be~~  
21 ~~punished by the court as a civil contempt may be punished.~~

22 7. Unless the hearing is held before a quorum of the entire  
23 board, the presiding officer shall prepare and file with the  
24 board the proposed findings of fact, conclusions of law, and  
25 decision and order, with a complete written transcript of the  
26 proceeding, together with all exhibits presented, shall be  
27 considered by the entire board at the earliest practicable time  
28 pleadings, motions, objections, and rulings within sixty days  
29 of the date of the hearing absent compelling circumstances.

30 ~~The licensee and the licensee's attorney shall have the~~  
31 ~~opportunity to appear personally to present the licensee's~~  
32 ~~position and arguments to the board. The board shall determine~~  
33 ~~the charge or charges upon the merits on the basis of the~~  
34 ~~evidence in the record before it.~~

35 8. The proposed findings of fact, conclusions of law, and

1 decision and order may be appealed to the full board by either  
2 party by serving on the executive director, either in person or  
3 by certified mail, a notice of appeal within thirty days after  
4 service of the proposed findings of fact, conclusions of law,  
5 and decision and order on the appealing party.

6 ~~8.~~ 9. If a majority of the members of the board vote in  
7 favor of finding the licensee guilty of an act or offense  
8 specified in section 147.55 or 148.6, the board shall prepare  
9 written findings of fact ~~and its decision,~~ conclusions of law,  
10 and a decision and order imposing one or more of the following  
11 disciplinary measures:

12 a. Suspend the licensee's license to practice the profession  
13 for a period to be determined by the board.

14 b. Revoke the licensee's license to practice the profession.

15 c. Suspend imposition of judgment and penalty or impose  
16 the judgment and penalty, but suspend enforcement and place  
17 the physician or acupuncturist on probation. The probation  
18 ordered may be vacated upon noncompliance. The board may  
19 restore and reissue a license to practice medicine and surgery  
20 or osteopathic medicine and surgery, or acupuncture, but may  
21 impose a disciplinary or corrective measure which the board  
22 might originally have imposed. A copy of the board's ~~order,~~  
23 findings of fact, conclusions of law, and decision and order,  
24 shall be served on the licensee in the manner of service of an  
25 original notice or by certified mail return receipt requested.

26 ~~9.~~ 10. Judicial review of the board's action may be  
27 sought in accordance with the terms of the Iowa administrative  
28 procedure Act, chapter 17A.

29 ~~10.~~ 11. The board's order revoking or suspending a license  
30 to practice medicine and surgery or osteopathic medicine  
31 and surgery, or acupuncture, or to discipline a licensee  
32 shall remain in force and effect until the appeal is finally  
33 determined and disposed of upon its merit.

34 EXPLANATION

35 This bill relates to disciplinary procedures before the

1 board of medicine.

2 The bill provides that at least half of the members of a  
3 disciplinary hearing panel containing alternate members shall  
4 be members of the board of medicine and at least half the  
5 members shall be licensed to practice under Code chapter 148.

6 The bill increases the board's maximum civil penalty from a  
7 total of \$10,000 to \$10,000 for each violation, up to a maximum  
8 of \$50,000 per case.

9 Relating to disciplinary procedures, the bill rewrites  
10 the existing provisions to provide additional detail. The  
11 bill specifies that the procedures for licensee discipline  
12 in Code section 148.7 apply to persons licensed to practice  
13 acupuncture.

14 The bill specifies that a disciplinary hearing may be  
15 presided over by any of the following, at the discretion  
16 of the board: a quorum of the entire board; a panel of at  
17 least three board members; a panel made up of specialists;  
18 or an administrative law judge. The bill rewrites existing  
19 provisions relating to the power of the presiding officer to  
20 issue subpoenas and the enforcement of those subpoenas.

21 The bill allows an administrative law judge to preside  
22 at certain contested cases, when those cases do not require  
23 medical expertise or involve sexual misconduct or impairment.  
24 The bill codifies in Code chapter 148 provisions that are  
25 generally set out in Code chapter 17A relating to the decision  
26 in a contested case. If a quorum of the entire board hears the  
27 case, the board decision is final agency action. If less than  
28 a quorum or an administrative law judge hears the case, the  
29 decision may be appealed to the entire board.