

Senate Study Bill 1085 - Introduced

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

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 to
17 exceed ~~ten~~ twenty thousand dollars for each violation of the
18 laws and rules governing the practice of medicine.

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

21 **148.7 Procedure for licensee discipline.**

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

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

1 of notice of the commencement of an ordinary action or by
2 restricted certified mail.

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

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

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

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

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

34 b. A panel of not less than three board members, at least
35 two of whom are licensed in the profession.

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

3 d. An administrative law judge. The decision to assign
4 an administrative law judge shall be within the sole
5 discretion of the board. The board may only assign cases to
6 an administrative law judge to serve as the presiding officer
7 at hearing that involve allegations of one or more violations
8 of the laws or rules governing the practice of medicine which
9 do not involve a standard of medical care determination. The
10 board shall define by rule those cases which may be assigned
11 to an administrative law judge, and the process for using
12 an administrative law judge as the presiding officer. The
13 administrative law judge shall be assigned by the division of
14 administrative hearings pursuant to section 10A.801, and shall
15 be vested with full authority of the board to schedule and
16 conduct hearings.

17 ~~4. Disciplinary hearings held pursuant to section 272C.6,~~
18 ~~subsection 1, shall be heard by the board, or by a panel of~~
19 ~~not less than six members, at least three of whom are board~~
20 ~~members, and the remaining appointed pursuant to section~~
21 ~~148.2A, with no more than three of the six being public~~
22 ~~members. Notwithstanding chapters 17A and 21, a disciplinary~~
23 ~~hearing shall be open to the public at the discretion of the~~
24 ~~licensee.~~

25 5. The presiding officer may issue subpoenas, administer
26 oaths, and take or cause depositions to be taken in connection
27 with the hearing. The presiding officer shall issue subpoenas
28 at the request and on behalf of the parties. If a person
29 refuses to obey a subpoena issued by the presiding officer or
30 to answer a proper question during the hearing, the presiding
31 officer may invoke the aid of the district court in requiring
32 the attendance and testimony of a person or the production
33 of papers. A failure to obey the order of the court may be
34 punished by the court as a civil contempt.

35 ~~5.~~ 6. A record of the proceedings shall be kept. The

1 licensee shall have the opportunity to appear personally and
2 by an attorney, with the right to produce evidence on the
3 licensee's own behalf, to examine and cross-examine witnesses,
4 and to examine documentary evidence produced against the
5 licensee.

6 ~~6. If a person refuses to obey a subpoena issued by the
7 presiding member or administrative law judge or to answer a
8 proper question during the hearing, the presiding member or
9 administrative law judge may invoke the aid of a court of
10 competent jurisdiction or judge of this court in requiring
11 the attendance and testimony of the person and the production
12 of papers. A failure to obey the order of the court may be
13 punished by the court as a civil contempt may be punished.~~

14 7. Unless the hearing is held before a quorum of the entire
15 board, the presiding officer shall prepare and file with the
16 board the proposed findings of fact, conclusions of law, and
17 decision and order, with a complete written transcript of the
18 proceeding, together with all exhibits presented, shall be
19 considered by the entire board at the earliest practicable time
20 pleadings, motions, objections, and rulings within sixty days
21 of the date of the hearing absent compelling circumstances.
22 ~~The licensee and the licensee's attorney shall have the
23 opportunity to appear personally to present the licensee's
24 position and arguments to the board. The board shall determine
25 the charge or charges upon the merits on the basis of the
26 evidence in the record before it.~~

27 8. The proposed findings of fact, conclusions of law, and
28 decision and order may be appealed to the full board by either
29 party by serving on the executive director, either in person or
30 by certified mail, a notice of appeal within thirty days after
31 service of the proposed findings of fact, conclusions of law,
32 and decision and order on the appealing party.

33 ~~8.~~ 9. If a majority of the members of the board vote in
34 favor of finding the licensee guilty of an act or offense
35 specified in section 147.55 or 148.6, the board shall prepare

1 written findings of fact ~~and its decision~~, conclusions of law,
2 and a decision and order imposing one or more of the following
3 disciplinary measures:

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

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

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

18 ~~9.~~ 10. Judicial review of the board's action may be
19 sought in accordance with the terms of the Iowa administrative
20 procedure Act, chapter 17A.

21 ~~10.~~ 11. The board's order revoking or suspending a license
22 to practice medicine and surgery or osteopathic medicine
23 and surgery, or acupuncture, or to discipline a licensee
24 shall remain in force and effect until the appeal is finally
25 determined and disposed of upon its merit.

26 EXPLANATION

27 This bill relates to disciplinary procedures before the
28 board of medicine.

29 The bill provides that at least half of the members of a
30 disciplinary hearing panel containing alternate members shall
31 be members of the board of medicine and at least half the
32 members shall be licensed to practice under Code chapter 148.

33 The bill increases the board's maximum civil penalty from
34 \$10,000 to \$20,000 and specifies that this penalty may be
35 assessed for each violation.

1 Relating to disciplinary procedures, the bill rewrites
2 the existing provisions to provide additional detail. The
3 bill specifies that the procedures for licensee discipline
4 in Code section 148.7 apply to persons licensed to practice
5 acupuncture.

6 The bill specifies that a disciplinary hearing may be
7 presided over by any of the following, at the discretion
8 of the board: a quorum of the entire board; a panel of at
9 least three board members; a panel made up of specialists;
10 or an administrative law judge. The bill rewrites existing
11 provisions relating to the power of the presiding officer to
12 issue subpoenas and the enforcement of those subpoenas.

13 The bill allows an administrative law judge to hear certain
14 board-assigned contested cases without a hearing panel. The
15 bill codifies in Code chapter 148 provisions that are generally
16 set out in Code chapter 17A relating to the decision in a
17 contested case. If a quorum of the entire board hears the
18 case, the board decision is final agency action. If less than
19 a quorum or an administrative law judge hears the case, the
20 decision may be appealed to the entire board.