

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

**Proposing rulemaking related to complaints and investigations  
and providing an opportunity for public comment**

The Department of Inspections, Appeals, and Licensing hereby proposes to rescind Chapter 9, “Complaints and Investigations,” Iowa Administrative Code, and to adopt a new chapter with the same name.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.3, 17A.22 and 272C.3 and Executive Order 10 (January 10, 2023).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 272C.

*Purpose and Summary*

This proposed rulemaking is intended to provide guidance on complaint and investigation procedures. The rulemaking ensures licensees are aware of the investigative process and understand their rights and responsibilities related to the complaint and investigative process. The rulemaking sets forth information such as the process for submitting a complaint, duties of the licensee in reporting the licensee’s own malpractice or disciplinary actions, and duties of the licensee in reporting first-hand knowledge of violations from other licensees. The rulemaking also provides the procedure to issue investigatory subpoenas, initiate the peer review process and require board appearances by the licensee.

A public hearing was held November 21, 2023, after proper notice. No public comment was received.

*Fiscal Impact*

This rulemaking will have no fiscal impact on the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover operations of the regulated professional licensing boards.

*Jobs Impact*

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, 481—Chapter 6.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 13, 2024. Comments should be directed to:

Emily DeRonde  
Iowa Department of Inspections, Appeals, and Licensing  
6200 Park Avenue  
Des Moines, Iowa 50321  
Phone: 515.249.7038  
Email: [emily.deronde@dia.iowa.gov](mailto:emily.deronde@dia.iowa.gov)

### *Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 13, 2024 9 to 9:20 a.m.	6200 Park Avenue Des Moines, Iowa Video call link: <a href="https://meet.google.com/isb-pmab-qob">meet.google.com/isb-pmab-qob</a> Or dial: +1 813.252.1868 PIN: 724 486 884# More phone numbers: <a href="tel:meet/isb-pmab-qob?pin=8352415222450">tel.meet/isb-pmab-qob?pin=8352415222450</a>
February 14, 2024 9 to 9:20 a.m.	6200 Park Avenue Des Moines, Iowa Video call link: <a href="https://meet.google.com/isb-pmab-qob">meet.google.com/isb-pmab-qob</a> Or dial: +1 813.252.1868 PIN: 724 486 884# More phone numbers: <a href="tel:meet/isb-pmab-qob?pin=8352415222450">tel.meet/isb-pmab-qob?pin=8352415222450</a>

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 645—Chapter 9 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 9 COMPLAINTS AND INVESTIGATIONS

##### **645—9.1(272C) Complaints.**

**9.1(1)** Complaints can be submitted online, in writing, or verbally and are to include the name and contact information of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated by the board.

**9.1(2)** A person is not civilly liable for filing a complaint in good faith, or for cooperating with a board investigation.

**645—9.2(272C) Report of malpractice claims or actions or disciplinary actions.** The licensee will submit any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

**645—9.3(272C) Report of acts or omissions.** A licensee who has knowledge of rule violations committed by another licensee will file a report to the board. The report will include the name and contact information of the licensee and the date, time, and place of the incident.

**645—9.4(272C) Investigation of complaints or reports.** Board staff may request additional information, solicit a response from the licensee, subpoena records, conduct interviews, gather evidence, and perform other investigatory duties to sufficiently inform the board.

**645—9.5(17A,272C) Issuance of investigatory subpoenas.**

**9.5(1)** The board administrator or designee may, upon the written request of a board investigator or on the administrator's own initiative, subpoena books, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

**9.5(2)** Each subpoena will contain:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production, or inspection and copying;
- d. The deadline for a motion to quash or modify the subpoena to be filed;
- e. The signature, address and telephone number of the board administrator or designee;
- f. The date of issuance;
- g. A return of service.

**9.5(3)** A person can challenge the subpoena by filing a motion to quash describing the legal justification for the motion accompanied by a legal brief or factual affidavits, within 14 days after service of the subpoena.

**9.5(4)** Upon receipt of a timely motion to quash or modify a subpoena, an administrative law judge will issue a decision. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

**9.5(5)** A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person, via email, or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

**9.5(6)** If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

**645—9.6(272C) Peer review.**

**9.6(1)** A complaint may be assigned to a peer reviewer for review and report to the board.

**9.6(2)** The board determines what complaints or other matters are referred to a peer reviewer.

**9.6(3)** Peer reviewers are not to be liable for acts, omissions, or decisions made in connection with service made in good faith.

**9.6(4)** The peer reviewer will observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

**645—9.7(17A) Appearance.** The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board administrator assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 272C.