

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

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

The Department of Inspections, Appeals, and Licensing hereby proposes to rescind Chapter 13, “Discipline,” and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 21.7 and chapter 272C and Executive Order 10 (January 10, 2023).

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 21.7 and chapter 272C.

*Purpose and Summary*

This proposed rulemaking provides protection to Iowa by publicly defining required professional standards for the 18 boards represented in this chapter. This includes the following boards: Hearing Aid Specialist Board, Speech Pathology and Audiology Board, Nursing Home Administrator Board, Optometry Board, Sign Language Interpreters and Transliterated Board, Barbering and Cosmetology Arts and Sciences Board, Physical and Occupational Therapy Board, Athletic Training Board, Mortuary Science Board, Physician Assistants Board, Chiropractic Board, Behavioral Science Board, Psychology Board, Social Work Board, Podiatry Board, Massage Therapy Board, Dietetics Board, and Respiratory Care Board. This is important to both the public and to the licensee because the rulemaking creates a shared understanding of what is and is not appropriate for certain types of licensed individuals. When professional standards are not met, it can subject a licensee to discipline against a licensee’s license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation.

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 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, pursuant to 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: [meet.google.com/isb-pmab-qob](https://meet.google.com/isb-pmab-qob)  
Or dial: +1 813.252.1868  
PIN: 724 486 884#  
More phone numbers:  
[tel.meet/isb-pmab-qob?pin=8352415222450](tel:meet/isb-pmab-qob?pin=8352415222450)

February 14, 2024  
9 to 9:20 a.m.

6200 Park Avenue  
Des Moines, Iowa  
Video call link: [meet.google.com/isb-pmab-qob](https://meet.google.com/isb-pmab-qob)  
Or dial: +1 813.252.1868  
PIN: 724 486 884#  
More phone numbers:  
[tel.meet/isb-pmab-qob?pin=8352415222450](tel:meet/isb-pmab-qob?pin=8352415222450)

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 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13  
DISCIPLINE

**645—13.1(272C) Definitions.**

“Board” means a professional licensing board established pursuant to Iowa Code chapter 147.

“Licensee” means a person licensed under Iowa Code chapter 147.

“Licensee discipline” means the same as defined in Iowa Code section 272C.1.

**645—13.2(147,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in Iowa Code section 147.55:

**13.2(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 in this state, which includes the following:

*a.* 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

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**13.2(2) Professional incompetence.** Professional incompetence includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to perform professional obligations within the scope of practice.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other licensees in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average licensees acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in this state.

*e.* Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**13.2(3) Practice outside the scope of the profession.**

**13.2(4) Habitual intoxication or addiction to the use of drugs, including:**

*a.* The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

*b.* The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

**13.2(5) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.**

**13.2(6) Falsification, alteration or destruction of client or patient records with the intent to deceive.**

**13.2(7) Acceptance of any fee by fraud or misrepresentation.**

**13.2(8) Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.**

**13.2(9) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and nolo contendere pleas, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.**

**13.2(10) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.**

**13.2(11) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure of the licensee to report such action within 30 days of the final action by such 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.**

**13.2(12)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice in another state, district, territory or country.

**13.2(13)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**13.2(14)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**13.2(15)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**13.2(16)** Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

**13.2(17)** Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

**13.2(18)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**13.2(19)** Failure to pay costs assessed in any disciplinary action.

**13.2(20)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**13.2(21)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**13.2(22)** Knowingly aiding, assisting, or advising a person to unlawfully practice the profession.

**13.2(23)** Failure to report a change of name or address within 30 days after it occurs.

**13.2(24)** Representing oneself as a licensee when one's license has been suspended or revoked, or when one's license is on inactive status.

**13.2(25)** Permitting another person to use the licensee's license for any purpose.

**13.2(26)** Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license to practice the profession.

**13.2(27)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

*a.* Verbally or physically abusing a patient or client.

*b.* Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

*c.* Betrayal of a professional confidence.

*d.* Engaging in a professional conflict of interest.

**13.2(28)** Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**13.2(29)** Violation of the terms of an initial agreement with the Iowa professional review committee or violation of the terms of an impaired practitioner recovery contract with the Iowa professional review committee.

**645—13.3(272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions as defined in Iowa Code section 272C.3, and as follows:

1. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

2. Such other sanctions allowed by law.

**645—13.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.

2. The facts of the particular violation.

3. Any extenuating facts or other countervailing considerations.

4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code sections 21.7, 272C.4, 272C.5, and 272C.6.