

ACCOUNTANCY EXAMINING BOARD[193A]

Notice of Intended Action

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

The Accountancy Examining Board hereby proposes to rescind Chapter 14, “Disciplinary Authority and Grounds for Discipline,” Iowa Administrative Code, 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 542.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 542 and Executive Order 10.

Purpose and Summary

These proposed amendments implement changes recommended by Executive Order 10. Chapter 14 provides protection to Iowans as it publicly defines the Board’s disciplinary authority and grounds for which disciplinary action can be taken. This is important to both the public and to the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, the licensee can be subject to discipline against the licensee’s license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. No current fees are being changed, and no new fees are being imposed.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

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 of Inspections, Appeals, and Licensing 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 January 31, 2024. Comments should be directed to:

Robert E. Lampe
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Fax: 515.725.9032
Email: robert.lampe@dia.iowa.gov

Public Hearing

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

January 30, 2024
12:30 to 12:50 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link: meet.google.com/yxd-hmkw-ppo
More phone numbers:
[tel.meet/yxd-hmkw-ppo?pin=1779851586643](tel:meet/yxd-hmkw-ppo?pin=1779851586643)

January 31, 2024
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The Department may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director's report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

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.

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 193A—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14

DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board exercises disciplinary authority for the protection and well-being of those persons who rely on licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline, as authorized under Iowa law.

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) The board's disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a licensee's regulated title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence

of thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

14.2(2) The public interest dictates that persons professing special competence in accountancy have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles not be permitted.

14.2(3) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm's CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm's behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm's performance.

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA or LPA, or a firm of CPAs or LPAs that holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another's application to the board, including:

- a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.
- b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.
- c. Failing or refusing to provide complete information in response to a question on an application.
- d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.
- e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.
- e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue.

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) Deceptive practices. Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or information known to the public that is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business or client records.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.

f. Knowingly presenting as one's own a certificate, license, or permit to practice, or a certificate, license, or permit number, or the signature of another or of a fictitious licensee, or otherwise falsely impersonating a person holding a CPA certificate or LPA license, or a permit to practice as a firm of CPAs or LPAs.

g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.

h. Fraud in representations as to skill or ability.

14.3(4) Unethical, harmful or detrimental conduct. Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct that are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in the AICPA Code of Professional Conduct.

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) Lack of proper qualifications. Lack of proper qualifications includes, but is not limited to:

a. Continuing to practice as a CPA or LPA without satisfying the continuing education necessary for certificate or license renewal.

b. Continuing to perform attest services or compilation services without timely completion of peer review.

c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20.

d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report are attest-qualified, hold the necessary certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 or the rules of the board.

e. Habitual intoxication or addiction to the use of drugs, or impairment that adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.

f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications that are necessary to ensure a

high standard of professional care as provided in Iowa Code section 272C.3(2) “b,” or that impairs a practitioner’s ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.

b. A failure to exercise due care including negligent delegation of duties in the practice of public accounting.

c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of the AICPA Code of Professional Conduct.

b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 days.

d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. A stay by an appellate court does not negate the obligation to report such incidents to the board; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action will be vacated.

e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.

f. Violating Iowa Code section 542.17.

g. Violating Iowa Code section 542.18.

h. Violating or aiding and abetting another’s violation of Iowa Code section 542.13 or 542.20.

i. Violating the terms of an initial agreement with the Iowa professionals review committee or violation of the terms of an impaired practitioner recovery contract with the Iowa professionals review committee.

j. Violating a practice privilege afforded to an Iowa licensee in another state.

k. Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices obligate active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) *Failure to report.*

a. Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).

b. Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).

c. Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.

d. Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority’s final action.

e. Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.

f. Failure to report to the board a change in the licensee’s physical or mailing address within 30 calendar days of the change.

g. Failure to report as provided in 193A—subrule 13.4(3) or as otherwise required in the AICPA Code of Professional Conduct.

14.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision imposing discipline.

14.3(11) *Conviction of a crime.* Conviction of any crime described in Iowa Code section 542.5(2) and as limited by Iowa Code section 272C.10(5) is grounds for denial, revocation, or suspension of a license. “Conviction” includes any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, not entered, or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction is vacated.

14.3(12) *Conduct discreditable to the accounting profession.* Conduct discreditable to the accounting profession includes any act or practice that diminishes the public’s confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public’s trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

- a.* Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.
- b.* Placement on the sex offender registry.
- c.* Securities fraud or violation of the Iowa consumer fraud Act.
- d.* Willful or repeated failure to timely file tax returns or other tax documents.
- e.* False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.
- f.* Providing false or misleading information to a financial institution or governmental body or official.
- g.* Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.
- h.* Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.
- i.* Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and section 546.10.