

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

**Rulemaking related to enforcement proceedings against licensees**

The Board of Mortuary Science hereby adopts Chapter 105, “Enforcement Proceedings Against Nonlicensees,” Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 147.76 and 156.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 156 and Executive Order 10 (January 10, 2023).

*Purpose and Summary*

The intent of Chapter 105 is to impose civil penalties against persons who are practicing mortuary science and are not licensed by the Board for the protection of the public who rely upon licensed individuals and establishments for the performance of mortuary science services.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7534C**. Public hearings were held on February 13 and 14, 2024, at 1:30 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Board on March 7, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*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 Board for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*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).

*Effective Date*

This rulemaking will become effective on May 22, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following new 645—Chapter 105:

CHAPTER 105  
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

**645—105.1(156) Civil penalties against nonlicensees.** The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 156.16. In addition to the procedures set forth in Iowa Code section 156.16, this chapter will apply.

**645—105.2(156) Unlawful practices.** Practices by unlicensed persons or establishments that are subject to civil penalties include but are not limited to:

1. Acts or practices by unlicensed persons that require licensure as a funeral director under Iowa Code chapter 156.
2. Acts or practices by unlicensed establishments that require licensure as a funeral establishment or cremation establishment under Iowa Code chapter 156.
3. Use of the words “funeral director,” “mortician,” or other title in a manner that states or implies that the person is engaged in the practice of mortuary science as defined in Iowa Code chapter 156.
4. Use or attempted use of a licensee’s certificate or an expired, suspended, revoked, or nonexistent certificate.
5. Falsely impersonating a licensed funeral director.
6. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
7. Other violations of Iowa Code chapter 156.
8. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

**645—105.3(156) Investigations.** The board is authorized by Iowa Code sections 17A.13(1) and 156.16 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations will conform to the procedures outlined in this chapter. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

**645—105.4(156) Subpoenas.** Pursuant to Iowa Code sections 17A.13(1) and 156.16, the board is authorized in connection with an investigation of an unlicensed person or establishment to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, that the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 645—9.5(17A,272C).

**645—105.5(156) Notice of intent to impose civil penalties.** The notice of the board’s intent to issue an order to require compliance with Iowa Code chapter 156 and to impose a civil penalty will be served upon the nonlicensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa R. Civ. P. 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.

3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 156.
5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.
6. The address to which written request for hearing must be made.

**645—105.6(156) Requests for hearings.**

**105.6(1)** Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa R. Civ. P. 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

**105.6(2)** If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 156, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

**105.6(3)** If a request for hearing is timely made, the board will issue a notice of hearing and conduct a contested case hearing in the same manner as applicable to disciplinary cases against licensees.

**105.6(4)** A nonlicensed person who fails to timely request a contested case hearing will have failed to exhaust "adequate administrative remedies" as that term is used in Iowa Code section 17A.19(1).

**105.6(5)** A nonlicensed person who is aggrieved or adversely affected by the board's final decision following a contested case hearing may seek judicial review as provided in Iowa Code section 17A.19.

**105.6(6)** A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 156 at any stage of the proceeding upon mutual consent of the board.

**105.6(7)** The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published as provided in rule 645—11.30(272C). Hearings will be open to the public.

**645—105.7(156) Factors to consider.** The board may consider the following when determining the amount of civil penalty to impose, if any:

1. Whether the amount imposed will be a substantial economic deterrent to the violation.
2. The circumstances leading to the violation.
3. The severity of the violation and the risk of harm to the public.
4. The economic benefits gained by the violator as a result of noncompliance.
5. The interest of the public.
6. The time lapsed since the unlawful practice occurred.
7. Evidence of reform or remedial actions.
8. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
9. Whether the violation involved an element of deception.
10. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
11. The clarity of the issue involved.
12. Whether the violation was willful and intentional.
13. Whether the nonlicensee acted in bad faith.
14. Whether the nonlicensee cooperated with the board.

**645—105.8(156) Enforcement options.** In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement as provided in Iowa Code section 156.16.

These rules are intended to implement Iowa Code chapters 17A, 147, and 156.

[Filed 3/26/24, effective 5/22/24]

[Published 4/17/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/17/24.