

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board has the authority to issue investigatory subpoenas pursuant to Iowa Code section 17A.13.

4.3(1) Scope of subpoena. The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records, and any other real evidence necessary for the board to determine whether it should institute a contested case proceeding.

4.3(2) Content of request. A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Additional requirements for subpoenas for mental health records. In the case of a subpoena for mental health records, a written request for a subpoena or the executive director's written memorandum in support of the issuance of the subpoena shall, in addition to the requirements of subrule 4.3(2), set forth sufficient facts to establish the following:

- 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.

4.3(4) Contents of subpoena. Each issued subpoena shall contain the following:

- 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 time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address, and telephone number of the executive director or designee;
- f. The date of issuance; and
- g. A return of service.

4.3(5) Motion to quash. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(6) Ruling on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(7) Appeal of an administrative law judge ruling. 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 executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(8) Judicial review. 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:

- a. The person is notified that the investigation has been concluded with no formal action; or
- b. There is a final decision in the contested case.