

**641—132.5(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal.**

**132.5(1)** All complaints regarding the operation of authorized emergency medical care service programs, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**132.5(2)** Complaints and the investigative process will be treated as confidential in accordance with Iowa Code section 22.7 and chapter 272C. An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department within 30 days following knowledge of the violation.

**132.5(3)** Service program authorization may be denied, issued a civil penalty not to exceed \$1,000, issued a citation and warning, placed on probation, suspended, revoked, or otherwise disciplined by the department in accordance with Iowa Code section 147A.5(3) for any of the following reasons:

- a.* Knowingly allowing the falsifying of a patient care report (PCR).
- b.* Failure to submit required reports and documents.
- c.* Delegating professional responsibility to a person when the service program knows that the person is not qualified by training, education, experience or certification to perform the required duties.
- d.* Practicing, condoning, or facilitating discrimination against a patient, student or employee based on race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability diagnosis, or social or economic status.
- e.* Knowingly allowing sexual harassment of a patient, student or employee. Sexual harassment includes sexual advances, sexual solicitations, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- f.* Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.
- g.* Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means or misrepresentation or by submitting false information.
- h.* Engaging in conduct detrimental to the well-being or safety of the patients receiving or who may be receiving emergency medical care.
- i.* Failure to correct a deficiency within the time frame required by the department.
- j.* Engaging in any conduct that subverts or attempts to subvert a department investigation.
- k.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.
- l.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
- m.* Knowingly aiding, assisting or advising a person to unlawfully practice EMS.
- n.* Acceptance of any fee by fraud or misrepresentation.
- o.* 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.
- p.* Violating privacy and confidentiality. A service program shall not disclose or be compelled to disclose patient information unless disclosure is required or authorized by law.
- q.* Practicing emergency medical services or using a designation of certification or otherwise holding itself out as practicing emergency medical services at a certain level of authorization when the service program is not authorized at such level.
- r.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

**132.5(4)** The department shall notify the applicant of the granting or denial of authorization or renewal, or shall notify the alleged violator of action to issue a citation and warning, place on probation or suspend or revoke authorization or renewal pursuant to Iowa Code sections 17A.12 and 17A.18.

Notice of issuance of a denial, citation and warning, probation, suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

**132.5(5)** Any requests for appeal concerning the denial, citation and warning, probation, suspension or revocation of service program authorization or renewal shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, citation and warning, probation, suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

**132.5(6)** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**132.5(7)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

**132.5(8)** When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in 132.5(9).

**132.5(9)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**132.5(10)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections, and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

**132.5(11)** The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

**132.5(12)** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**132.5(13)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Bureau of Emergency and Trauma Services, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**132.5(14)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

**132.5(15)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

**132.5(16)** This rule is not subject to waiver pursuant to 641—Chapter 178 or any other provision of law.

**132.5(17)** Emergency adjudicative proceedings.

*a.* Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend an authorization in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

*b.* Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

(2) Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

(3) Whether the program required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

(4) Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

*c.* Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the service program that is required to comply with the order by utilizing one or more of the following procedures:

1. Personal delivery.

2. Certified mail, return receipt requested, to the last address on file with the department.

3. Fax. Fax may be used as the sole method of delivery if the service program required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the service program that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the service program that is required to comply with the order is the party requesting the continuance.

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