

**761—604.40(321) Failure to pass examination.**

**604.40(1)** An applicant who fails to pass a required examination or reexamination shall not be licensed.

*a.* If the applicant does not have a valid Iowa license, the department shall deny the applicant a license.

*b.* If the applicant has a valid Iowa license, the department shall suspend the license for incapability. However, if the applicant's license is valid for less than 30 days, the department shall deny further licensing. The department shall serve a notice of suspension or denial.

*c.* See 761—615.4(321) for further information on denials and 761—615.14(321) for further information on suspensions for incapability.

*d.* An applicant may contest a denial or suspension in accordance with 761—615.38(321).

**604.40(2)** Limitations on the hearing and appeal process.

*a.* After a suspension or denial for failure to pass a required knowledge or driving test, a person who contests the suspension or denial shall be deemed to have exhausted the person's administrative remedies after three unsuccessful attempts to pass the required test.

*b.* After the three unsuccessful attempts, no further testing shall be allowed until six months have elapsed from the date of the last test failure, and then only if the applicant demonstrates a significant change or improvement in those physical or mental factors that resulted in the original decision. A request for further testing must be submitted in writing to the motor vehicle division at the address in subrule 604.3(1).

*c.* Notwithstanding paragraphs "*a*" and "*b*" of this subrule, no testing shall occur if the director determines that it is unsafe to allow testing.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177, 321.180A and 321.210.

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