



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

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Scheduled for committee review
Tuesday, December 14th, 2004
Senate Room #22

Reference
XXVII IAB No. 10(11/10/04)
XXVII IAB No. 11(11/24/04)

HIGHLIGHTS IN THIS ISSUE:

EXECUTIVE BRANCH ETHICS, Ethics and Campaign Disclosure Board .....1
SELF-FUNDED HEALTH INSURANCE IN SCHOOLS, Insurance Division .....2
USE OF LASERS IN COSMETOLOGY, Professional Licensure Division .....3
EMT TRAINING AND CERTIFICATION, Public Health Department .....5
STREAMLINED SALES AND USE TAX, Revenue Department .....5

CREDIT UNION DIVISION

10:20

Investment and deposit activities for credit unions, IAB Vol. XXVII, No. 11, ARC 3821B, ADOPTED.

These rules allow credit unions organized under Iowa law to engage in those investment and deposit activities which would be permitted if the credit union were federally chartered. Iowa credit unions must comply with generally accepted accounting principles (GAAP) applicable to reports or statements required to be filed with the division.

A credit union must establish written investment policies consistent with state and federal laws; the policies must be reviewed annually. They must detail the credit unions' investment strategies and policies. It must also retain discretionary control over its purchase and sale of investments, except that control of up to 10 percent of total assets or 100 percent of net worth may be given over to an investment adviser registered with the Securities and Exchange Commission (SEC). Any broker utilized by the credit union must also be registered with the SEC.

The rules sets out a long list of permissible investments; a very brief overview of the list include such things as:

- Variable rate investments tied to domestic interest rates;
• Corporate credit union shares or deposits limited to 4 percent of assets;
• Registered investment company or collective investment funds;
• Collateralized mortgage obligation/real estate mortgage investment conduits;
• Municipal security;
• Commercial paper.

The filing also sets out a list of prohibited investments, including most derivatives, certain mortgage-related investments, certain zero-coupon bonds and insurance annuities. There is a pilot program which will allow participants to make some types investments that remain prohibited under Iowa law but permitted by federal regulations.

ETHICS AND CAMPAIGN DISCLOSURE BOARD

10:30

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Executive branch ethics IAB Vol. XXVII, No. 10, ARC 3789B and 3793B, NOTICE.

The board offers two proposals relating to executive branch ethics. The first, ARC 3789B prohibits an executive branch lobbyist from directly or indirectly offering or make a loan to an official, an employee, or a candidate for statewide office. There is an exception for loans made at market interest rates, and for loans subject to the campaign finance laws which are made to a candidate committee of a candidate for state wide office.

The second filing, ARC 3793B provides that it is an ethical violation for a government employer to discharge or discriminate against an employee because the employee:

- filed a complaint,
- provided information to the board for a possible board-initiated investigation, or
- provided information during the course of a board investigation.

This "whistleblower" protection is provided when the employee action is made in good faith—i.e.: based a reasonable belief that the statements or materials were true and accurate.

### INSURANCE DIVISION

11:00

Self-funded health insurance plans for school, IAB Vol. XXVII, No. 10, ARC 3802B, NOTICE.

Senate File 386 required the division to study health insurance needs for school personnel. These proposed rules are the result of that study; they provide for self-funded plans and the use of pooling among districts. Before districts can form a risk pool, they must obtain a certificate from the division. The pooling arrangement must be detailed in a "28E" agreement; that agreement must limit the ability of participants to drop out of the program in case of a default and must impose deficit assessments for all plan participants. The pool must also provide information needed to ensure that plan is able to cover all reasonably anticipated expenses and to avoid liability for the government body. Reserves must be established and excess loss coverage must be obtained limiting

total claim liability for each year to not more than 125 percent of the level of claims liability.

### DEPARTMENT OF MANAGEMENT

11:15

Open records, IAB Vol. XXVII, No. 11, ARC 3811B, NOTICE.

The department proposes to replace its current open records rule with an expanded and detailed policy that generally sets out record management and retention policies. A process for open records requests and access is established. Iowa Code Chapter 22 does allow an agency to charge for a copy of a record, for the time spent finding a record and for the cost of supervision. Those costs are clearly detailed in the rule: non-incident retrieval or supervisory services are \$15.00 per hour; copies will be provided at no charge for the first 25 pages, and 20 cents per page for each additional page.

The rule embodies the concept that public access means not only that records be open to public inspection, but also that the records must be properly archived. The rule offers a succinct standard for document retention:

*"Every record made or received under the authority of, or coming into the custody, control, or possession of, department of management personnel, in connection with the transaction of official business of state government, and that has sufficient legal, fiscal, administrative, or historical value shall be retained in accordance with Iowa law."*

### PHARMACY BOARD OF EXAMINERS

1:10

Selected revisions, IAB Vol. XXVII, No. 10, ARC 3798B-NOTICE; ARC 3794B, ADOPTED .

As part of the education program pharmacy students are currently required to spend 1000 hours in a college-based clinical internship program; the intern must also complete 500 hours in an actual retail or hospital pharmacy, working under the supervision of a registered pharmacist. Under ARC 3798B the clinical internship is raised to 1250 hours, while the pharmacy internship is reduced to 250 hours. The proposal also recognizes "non-traditional" internships, which are defined as training at any site which is not licensed as a

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general or hospital pharmacy. This non-traditional training will not count towards the 1500 hour requirement.

ARC 3794B relates to practice standards and deals with internet prescriptions. Under this adopted rule a pharmacist cannot dispense a prescription drug if the pharmacist "knows or should have known" that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting patient/practitioner relationship.

### ENVIRONMENTAL PROTECTION DIVISION

1:30

Manure management: application of fertilizers, IAB Vol. XXVII, No. 10, ARC 3807B, NOTICE.

This proposal resolves an issue first addressed by the committee in August. §459.312, Code Supplement 2003, requires the Commission to establish a "phosphorus index," setting the manner and timing on a field basis, of land application of manure from a confinement feeding operation. The index identifies application rates based on the number of pounds of phosphorus that may be applied per acre and application practices utilized. The adopted rules required the applicator to report the date and application rate of commercial nitrogen and phosphorus fertilizers. At the August meeting commentators were concerned this would hold the applicator responsible for actions by the landowner that are outside of the application agreement between the landowner and the applicant. At the August meeting a 70-day delay was imposed.

This issue has now been apparently resolved. Under this proposal the applicator not held responsible for fertilizer applications by the landowner only if the applicator knew or should have known about the additional applications.

### ENVIRONMENTAL PROTECTION COMMISSION

1:30

Cold water designations in streams, IAB Vol. XXVII, No. 10, ARC 3805B, ADOPTED.

These rules were initially published in April. Under the previous rules there was a single cold water designation for streams: B(CW), which included all cold water bodies in a single category of water bodies which have temperature, flow, and other habitat characteristics making them suitable for the maintenance of a wide variety of cold water species, including non-reproducing populations of trout and associated aquatic communities. The revision splits this into two designations. The current designation would now be called Class B(CW1)-Type 1. The new designation: Class B(CW2)- Type 2, which consists of streams that feed a Tier 1 stream but do not themselves do not support consistent populations of trout.

The proposal would also revise the ammonia nitrogen and dissolved oxygen criteria applicable to each proposed use designation; it also adopts by reference the "*Cold Water Use Designation Assessment Protocol*", which establishes the criteria to designate a stream into one of the two categories. A Type 1 stream has a maximum stream water temperature during mid-May through mid-September does not exceed 75°F, and has a stream flow is at least 0.3 cubic feet per second. Basically, a Type 2 stream does not have the water flow to support a coldwater fish population.

### PROFESSIONAL LICENSURE

1:50

Cosmetology: expanded practice, IAB Vol. XXVII, No. 11, ARC 3815B, NOTICE.

House File 2358 significantly expanded the practice of cosmetology by redefining the scope of practice and authorizing the use of new procedures. To a great extent the revisions relate to hair removal and exfoliation (the removal of dead skin). The practice of cosmetology and esthetics has been expanded. Esthetics is a subset of the practice of cosmetology that deals with skin care and hair removal.

The Act authorizes board licensees to utilize laser technology and certain other procedures. A properly trained and licensed esthetician may

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administer microdermabrasion or a laser product with board approval. A licensed cosmetologist may additionally administer chemical peels; a licensed electrologist who holds a permanent license may utilize a certified laser product for the purpose of hair removal. The rules set out specific limits:

- A certified laser shall only be used on surface layers of the skin except for hair removal.
- A laser shall not be used on a minor unless the minor is accompanied by a parent or guardian and then shall be used only under general supervision of a physician.
- Licensees shall not administer any practice of removing skin by means of a razor-edged instrument.
- With the exception of hair removal, manicuring, and nail technology services, licensees shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered.
- Prior to providing services relating to a certified laser product, chemical peel, or microdermabrasion licensees shall obtain written consent from a client.

Licensees wishing to take advantage of this expanded practice must submit to the board evidence of training and certification specific to each procedure or device to be used. Licensees must report to the board any incident in which provision of these services resulted in physical injury requiring medical attention.

### PROFESSIONAL LICENSURE

1:50

Supervision of physician assistants, IAB Vol. XXVII, No. 10, ARC 3774B, NOTICE.

Code §148C.1 provides that a physician assistant (PA) work under the supervision of licensed physician. The PA board currently has a rule currently in place detailing this requirement; that rule is now being amended:

**326.8(4)** It shall be the responsibility of the physician assistant with a supervising physician to ensure that the physician assistant is adequately supervised. *The physician assistant shall ensure that the qualified practicing physician is informed of that physician's supervisory responsibilities for the physician assistant.*

Opponents of this proposal question whether the amendment serves any useful function and question whether any problem actually exists. They note that

the statute itself imposes the supervisory requirement and that both the PA and the physician are responsible to follow this legal requirement. They also question how compliance with this rule is to be documented.

Proponents contend the amendment ensures that the physician is aware they are in fact supervising a PA, especially in a remote site or free clinic, where the supervisory responsibility may be uncertain.. They contend the rule clearly establishes that the PA must notify their supervising physician that they are the PA's supervising physician.

### PUBLIC HEALTH DEPARTMENT

2:10

Quarantines: model policy for local government, IAB Vol. XXVII, No. 11, ARC 3839B, NOTICE.

In February 2004 the department published quarantine rules to implement the recently revised provisions of Code Chapter 139A; In this proposed rule the department establishes a model policy that can be used by local boards of health to create their own quarantine policies. The model is very similar to the departments' own rules.

Under the model a quarantine may be imposed due to the presence of any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. The actual list of diseases subject to quarantine are set out in the rule; SARS disease is one example of such a disease. Under Iowa law all health care providers and clinical laboratories must report any cases of communicable disease they discover. The reports are then investigated by either the department or a local board of health.

Enforced quarantines have a long history, with the most notable being "Typhoid" Mary Mallon; in the early Twentieth Century Mallon was administratively quarantined in an isolated cottage on a New York East River island until her death in 1938 (The action was taken only after Mallon refused all cooperation). Under Iowa law any person with a suspected or active quarantinable

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disease is excluded the workplace, school or at other public places until the individual receives the approval of the department or a local board of health.

The proposals set out a series of principles and procedures for imposing a quarantine. Enforced quarantines may be used only after attempts have been made to obtain voluntary isolation of the infected person. The terms of a quarantine must be the least restrictive as necessary to prevent spread of the disease. The site of a quarantine may be a residence or any other place, but it must be clearly identified as a quarantine area.

The local board must provide for the care of the quarantined person, including the provision of adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and medical care.

In those cases where a person refuses to comply, an administrative hearing is available to contest to contest the order, with judicial review of the order available. A quarantine order is enforceable in court and its' violation is a simple misdemeanor (§139A.25).

### PUBLIC HEALTH DEPARTMENT

2:10

Emergency medical technician: training and certification.  
IAB Vol. XXVII, No. 11, ARC 3838B, NOTICE.

Training and certification standards for emergency medical technicians (EMT) have been in effect for almost five years; this is the first major revision. Rules are developed by the department in consultation with the emergency medical care council. There are a variety of emergency care designations, based on function and specialty:

- Emergency medical technician-ambulance (EMT-A)
- Emergency medical technician-basic (EMT-B)
- Emergency medical technician-defibrillation (EMT-D)
- Emergency medical technician-intermediate (EMT-I)
- Emergency medical technician-paramedic (EMT-P)
- Emergency rescue technician (ERT)
- First responder (FR)
- First responder-defibrillation (FR-D)

Generally, EMT personnel provide emergency and non-emergency medical care in those areas for which the individual is certified; medical supervision is provided either by on-line consultation or in some situations through the use of a protocol. An EMT may provide service, within the EMTs' scope of practice:

- At the scene of an emergency;
- During transportation to a hospital;
- While in the hospital emergency department;
- Until patient care is directly assumed by a physician or by authorized hospital personnel; and
- During transfer from one medical care facility to another or to a private home.
- In a hospital or health care facility when under the direct supervision of a physician as part of an educational program or when the EMT is employed as a member of an authorized service program.

The rules contain a great deal of "boilerplate" language, relating to licensee discipline, education approvals and appeal procedures. There are two highlights: as with any licensed profession an EMT must obtain biennial continuing education. The level varies depending on the designation, from 12 to 60 hours. At least 50% of the training must be in a formal educational setting. The initial certification fee is \$20; renewal fees vary from \$10-25. The rule also set out a variety of minor fees.

### REVENUE DEPARTMENT

2:45

The Streamlined Sales And Use Tax Act. IAB Vol. XXVII, No. 11, ARC 3818B, NOTICE.

In 2003 the legislature enacted House File 683; this Act was an economic development package that also re-drafted portions of Iowa's sales and use tax laws. Division 14 of the Act contains The Streamlined Sales And Use Tax Act, which is model to simplify and update sales and use tax collection and administration on a nationwide-basis. The Act includes tax law simplifications, and revised administrative and collection procedures. Some 38 states were involved in the national project to create this model legislation; Iowa was a participating state.

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This national ongoing project has two components: first, states adopt enabling legislation referred to as the "Uniform Sales and Use Tax Administration Act". The Act allows the state to enter into an agreement with other states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce. The model itself did not require any amendments to a state's sales and use tax law. Secondly, states amend their sales and use tax laws to provide the simplifications and uniformity necessary. There is a national governing board comprised of representatives of each member state which oversees compliance. A certificate of compliance will document compliance with the provisions of the national agreement and provide documentation of that compliance. Iowa has created an advisory group, made up of taxpayers, department officials and other tax professionals to review and hopefully resolve issues that will arise concerning the implementation of this Act.

The Act will ultimately require the re-drafting of all the sales and use tax rules. These proposals are basically the first of many installments to update the Iowa rules.

### STATE PUBLIC DEFENDER

3:15

Indigent defense, IAB Vol. XXVII, No. 10, ARC 3813B, ADOPTED.

These provisions were adopted on an emergency basis in June. They detail the criminal actions for which a legal defense fee may be paid from the indigent fund and also reflect the statutory prohibition against paying for administrative actions through that defense fund. House File 2138 has added juvenile court proceeding under chapter 600 to the list of eligible proceedings.

The fee schedules for a variety of cases are revised; the rule is substantially the same as the present rules, and the specified fees are the same.

The filing adds a new chapter 13, relating to fees for other professional services. The defense fund will pay for a variety of defense related services, including: investigators, interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations. The rule sets out the approval criteria for each of these additional services; court approval is required for all services. In the event a claim is rejected by the public defender, the claimant may seek review from the trial court.

### MEDICAL EXAMINERS BOARD

No representative request to appear

Iowa Physician Health Committee, IAB Vol. XXVII, No. 11, ARC 3825B, ADOPTED.

Iowa Code §272C.3(1)"k" empowers all professional licensing boards to

"Establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, and who self-report the impairment to the committee, or who are referred by the board to the committee."

The Medical Board now re-names their committee the "Iowa Physician Health Committee" and gives some added detail to its operation. All the health-related licensing boards have a similar committee; these rules provide good examples as to how these programs generally operate. The programs attempt to divert licensees who have some type of substance abuse problem away from licensing discipline and into monitoring and treatment programs.

Under the Medical Board program the licensee agrees in a contract to abide by the requirements to the program developed for that licensee; the program involves treatment and can involve practice restrictions. Failure to abide by the terms of the contract can result in formal licensee discipline.

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