CHAPTER 148

MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY

Referred to in §85B.9, 124.555, 125.86, 135.24, 135.61, 135.105D, 135.159, 135B.7, 135C.40, 135G.1, 135H.1, 135J.1, 136.1, 137.105, 142C.7, 144.29A, 147.76, 147.108, 147.109, 147.135, 147.139, 147A.1, 148A.3, 152.1, 154.1, 154.10, 154B.2, 157.13, 225C.6, 229.1, 232.68, 280.16, 321.34, 321.186, 321.186A, 321.375, 321.376, 321.445, 321.446, 321L.2, 505.8, 509.3, 514.7, 514.17, 514B.1, 514C.3, 514C.11, 514C.13, 514C.17, 514C.18, 514C.20, 514C.25, 514C.29, 514F.1, 702.8, 702.17, 707.7, 707C.4, 708.3A, 714H.4, 915.86

[P]
Enforcement, §147.87, 147.92
Penalty, §147.86
Licensing board, support staff exceptions; location and powers; see §135.11A, 135.31
Utilization and cost control review committee; §514F.1

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148.1 Persons engaged in practice.

For the purpose of this subtitle, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery or osteopathic medicine and surgery:

1. Persons who publicly profess to be physicians and surgeons or osteopathic physicians and surgeons, or who publicly profess to assume the duties incident to the practice of medicine and surgery or osteopathic medicine and surgery.

2. Persons who prescribe, or prescribe and furnish, medicine for human ailments or treat the same by surgery.

3. Persons who act as representatives of any person in doing any of the things mentioned in this section.

[C97, §2579; C24, 27, 31, 35, 39, §**2538;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.1]
2008 Acts, ch 1088, §44; 2009 Acts, ch 41, §170, 264
Referred to in §148.2

148.2 Persons not engaged in practice.

Section 148.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine and surgery or osteopathic medicine and surgery who have completed at least two years' study in a medical school or a college of osteopathic medicine and surgery, approved by the board, and who prescribe medicine under the supervision of a licensed physician and surgeon or licensed osteopathic physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed podiatric physicians, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons or osteopathic physicians and surgeons of the United States army, navy, air force, marines, public health service, or other uniformed service when acting in the line of duty in this state, and holding a current, active permanent license in good standing in another state, district, or territory of the United States, or physicians and surgeons

or osteopathic physicians and surgeons licensed in another state, when incidentally called into this state in consultation with a physician and surgeon or osteopathic physician and surgeon licensed in this state.

[C97, §2579, 2581; S13, §2581; C24, 27, 31, 35, 39, §**2539**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.2]

96 Acts, ch 1034, §68; 2006 Acts, ch 1184, §90; 2007 Acts, ch 10, §86; 2008 Acts, ch 1088, §45

148.2A Board of medicine — alternate members.

1. As used in this chapter, *"board"* means the board of medicine established in chapter 147.

2. Notwithstanding sections 17A.11, 69.16, 69.16A, 147.12, 147.14, and 147.19, the board may have a pool of up to ten alternate members, including members licensed to practice under this chapter and members not licensed to practice under this chapter, to substitute for board members who are disqualified or become unavailable for any other reason for contested case hearings.

a. The board may recommend, subject to approval by the governor, up to ten people to serve in a pool of alternate members.

b. A person serves in the pool of alternate members at the discretion of the board; however, the length of time an alternate member may serve in the pool shall not exceed nine years. A person who serves as an alternate member may later be appointed to the board and may serve nine years, in accordance with sections 147.12 and 147.19. A former board member may serve in the pool of alternate members.

c. An alternate member licensed under this chapter shall hold an active license and shall have been actively engaged in the practice of medicine and surgery or osteopathic medicine and surgery in the preceding three years, with the two most recent years of practice being in Iowa.

d. When a sufficient number of board members are unavailable to hear a contested case, the board may request alternate members to serve.

e. Notwithstanding section 17A.11, section 147.14, subsection 2, and section 272C.6, subsection 5:

(1) An alternate member is deemed a member of the board only for the hearing panel for which the alternate member serves.

(2) A hearing panel containing alternate members must include at least six people.

(3) The majority of a hearing panel containing alternate members shall be members of the board.

(4) The majority of a hearing panel containing alternate members shall be licensed to practice under this chapter.

(5) A decision of a hearing panel containing alternate members is considered a final decision of the board.

f. An alternate member shall not receive compensation in excess of that authorized by law for a board member.

92 Acts, ch 1183, §11; 2007 Acts, ch 10, §87; 2008 Acts, ch 1088, §46; 2009 Acts, ch 133, §52

Referred to in §148.7

148.2B Executive director.

The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 8A.413, subsection 3, under the pay plan for exempt positions in the executive branch of government.

2008 Acts, ch 1088, §47

148.3 License to practice.

1. An applicant for a license to practice medicine and surgery or osteopathic medicine and surgery shall present to the board all of the following:

a. Evidence of a diploma issued by a medical college or college of osteopathic medicine and surgery approved by the board, or other evidence of equivalent medical education

approved by the board. The board may accept, in lieu of a diploma from a medical college or college of osteopathic medicine and surgery approved by the board, all of the following:

(1) A diploma issued by a medical college or college of osteopathic medicine and surgery which has been neither approved nor disapproved by the board.

(2) A valid standard certificate issued by the educational commission for foreign medical graduates or similar accrediting agency.

b. Evidence of having passed an examination prescribed by the board which shall include subjects which determine the applicant's qualifications to practice medicine and surgery or osteopathic medicine and surgery and which shall be given according to the methods deemed by the board to be the most appropriate and practicable. However, one or more examinations as prescribed by the board or any other national standardized examination which the board approves may be administered to any or all applicants in lieu of or in conjunction with other examinations which the board prescribes. The board may establish necessary achievement levels on all examinations for a passing grade and adopt rules relating to examinations.

c. Satisfactory evidence that the applicant has successfully completed one year of postgraduate internship or resident training in a hospital approved for such training by the board. An applicant who holds a valid certificate issued by the educational commission for foreign medical graduates shall submit satisfactory evidence of successful completion of two years of such training.

2. An application for a license shall be made to the board of medicine. All license and renewal fees shall be paid to the board.

3. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to minorities or low-income persons, or who live in rural areas.

4. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board.

1. [C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §**2540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3; 82 Acts, ch 1005, §4]

2. [C97, §2576; S13, §2576; C24, 27, 31, 35, 39, §**2540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3]

3. [C27, 31, 35, 39, §**2540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3]

90 Acts, ch 1086, §9, 10; 92 Acts, ch 1183, §12; 2004 Acts, ch 1168, §7; 2007 Acts, ch 10, §88; 2008 Acts, ch 1088, §48; 2009 Acts, ch 41, §55; 2009 Acts, ch 133, §53; 2010 Acts, ch 1069, §19; 2010 Acts, ch 1163, §2

Referred to in §147.49

148.4 Certificates of national board. Repealed by 2008 Acts, ch 1088, § 79.

148.5 Resident physician license.

A physician, who is a graduate of a medical school or college of osteopathic medicine and surgery and is serving as a resident physician who is not otherwise licensed to practice medicine and surgery or osteopathic medicine and surgery in this state, shall be required to obtain from the board a license to practice as a resident physician. The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution approved for such training by the board. A license shall be valid for a duration as determined by the board. The fee for each license shall be set by the board to cover the administrative costs of issuing the license. The board shall determine in each instance those eligible for a license, whether or not examinations shall be given, and the type of examinations. Requirements of the law pertaining to regular permanent licensure shall not be mandatory for a resident physician license except as specifically designated by the board. The granting of a resident physician

license does not in any way indicate that the person licensed is necessarily eligible for regular permanent licensure, or that the board in any way is obligated to license the individual.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.5]

90 Acts, ch 1086, §11; 92 Acts, ch 1183, §14; 2000 Acts, ch 1140, §32; 2007 Acts, ch 10, §90; 2008 Acts, ch 1088, §49

148.6 Licensee discipline — criminal penalty.

1. The board, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board may discipline a licensee who is guilty of any of the following acts or offenses:

a. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of the physician's profession.

b. Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication of guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

c. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

d. Having the license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence.

e. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery or osteopathic medicine and surgery.

f. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery or osteopathic medicine and surgery in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without this state.

h. Inability to practice medicine and surgery or osteopathic medicine and surgery with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

(1) The board may, upon probable cause, compel a physician to submit to a mental or physical examination by designated physicians or to submit to alcohol or drug screening within a time specified by the board.

(2) A person licensed to practice medicine and surgery or osteopathic medicine and surgery who makes application for the renewal of a license, as required by section 147.10, gives consent to submit to a mental or physical examination as provided by this paragraph "*h*" when directed in writing by the board. All objections shall be waived as to the admissibility of an examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a physician in another proceeding and shall be confidential, except for other actions filed against a physician to revoke or suspend a license.

i. Willful or repeated violation of lawful rule or regulation adopted by the board or violating a lawful order of the board, previously entered by the board in a disciplinary or

licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

3. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class "D" felony.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.6]

90 Acts, ch 1086, §12 – 14; 92 Acts, ch 1183, §15; 2007 Acts, ch 10, §91; 2008 Acts, ch 1088, §50; 2009 Acts, ch 133, §54

Referred to in §148.7, 272C.3, 272C.4, 272C.5

[P] Service of notice, R.C.P. 1.305 and 1.306

148.7 Procedure for licensee discipline.

A proceeding for the revocation or suspension of a license to practice medicine and surgery or osteopathic medicine and surgery or to discipline a person licensed to practice medicine and surgery or osteopathic medicine and surgery shall be substantially in accord with the following procedure:

1. The board may, upon its own motion or upon receipt of a complaint in writing, order an investigation. The board may, upon its own motion, order a hearing. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action or by restricted certified mail.

2. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing as provided in this section.

3. *a.* The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee.

b. The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the board the administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

4. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than six members, at least three of whom are board members, and the remaining appointed pursuant to section 148.2A, with no more than three of the six being public members. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

5. A record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by an attorney, with the right to produce evidence on the licensee's own behalf, to examine and cross-examine witnesses, and to examine documentary evidence produced against the licensee.

6. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of the person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

7. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and the licensee's attorney shall have the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

8. If a majority of the members of the board vote in favor of finding the licensee guilty of

an act or offense specified in section 147.55 or 148.6, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the licensee's license to practice the profession for a period to be determined by the board.

b. Revoke the licensee's license to practice the profession.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice medicine and surgery or osteopathic medicine and surgery, but may impose a disciplinary or corrective measure which the board might originally have imposed. A copy of the board's order, findings of fact, and decision, shall be served on the licensee in the manner of service of an original notice or by certified mail return receipt requested.

9. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

10. The board's order revoking or suspending a license to practice medicine and surgery or osteopathic medicine and surgery or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.7]

88 Acts, ch 1109, §16; 90 Acts, ch 1086, §15; 92 Acts, ch 1183, §16, 17; 98 Acts, ch 1202, §31, 46; 2003 Acts, ch 44, §114; 2007 Acts, ch 10, §92; 2008 Acts, ch 1088, §51

Referred to in §272C.5

[P] Manner of service, R.C.P. 1.302 – 1.315

148.8 Voluntary surrender of license.

The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted, has the same force and effect as an order of revocation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.8]

92 Acts, ch 1183, §18; 2007 Acts, ch 10, §93

Referred to in §272C.5

148.9 Reinstatement.

Any person whose license has been suspended may apply to the board for reinstatement at any time and the board may hold a hearing on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.9]

2007 Acts, ch 10, §94; 2008 Acts, ch 1088, §52

Referred to in §272C.5

148.10 Temporary license.

1. The board may, in its discretion, issue a temporary license authorizing the licensee to practice medicine and surgery or osteopathic medicine and surgery in a specific location or locations and for a specified period of time if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the license, which shall be substantially equivalent to those required for licensure under this chapter. The board shall determine in each instance those eligible for the license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure are mandatory for the temporary license except as specifically designated by the board. The granting of a temporary license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure or that the board in any way is obligated to so license the person.

2. The temporary license shall be issued for a period not to exceed one year and may be renewed, but a person shall not practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary license. The fee for the license

and the fee for renewal of the license shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the licenses.

[C66, 71, 73, 75, 77, 79, 81, §148.10]

87 Acts, ch 128, §1; 2004 Acts, ch 1167, §5; 2007 Acts, ch 10, §95; 2007 Acts, ch 215, §248; 2008 Acts, ch 1088, §53

148.11 Special license to practice medicine and surgery or osteopathic medicine and surgery.

1. Whenever the need exists, the board may issue a special license. The special license shall authorize the licensee to practice medicine and surgery or osteopathic medicine and surgery under the policies and standards applicable to the health care services of a medical or osteopathic medical school academic staff member or as otherwise specified in the special license.

2. A person applying for a special license shall:

a. Be a physician in a professional specialty.

b. Present a diploma issued by a medical or osteopathic medical college.

c. Present evidence of an unrestricted license to practice medicine and surgery or osteopathic medicine and surgery which has been issued by a foreign state or territory or an alien country.

d. Present a letter of recommendation from the dean of a medical or osteopathic medical school in this state indicating that the applicant has been invited to serve on the academic staff of the medical or osteopathic medical school.

e. Present letters of recommendation from universities, other educational institutions, or research facilities that indicate the noteworthy professional attainment by the applicant.

f. Present biographical background information concerning the applicant's education and qualifications.

3. The board shall establish a fee for initial issuance and renewal of a special license. The board shall establish rules for granting and renewing a special license consistent with those for permanent licenses.

4. A special license issued under this section shall automatically expire upon the special licensee discontinuing service on the academic staff of a medical or osteopathic medical school in this state. An expired special license shall not be renewed. However, a former special licensee may reapply for a special license.

[C77, 79, 81, §148.11]

2007 Acts, ch 10, §96; 2008 Acts, ch 1088, §54

148.12 Voluntary agreements.

The board, after due notice and hearing, may issue an order to revoke, suspend, or restrict a license to practice medicine and surgery or osteopathic medicine and surgery, or to issue a restricted license on application if the board determines that a physician licensed to practice medicine and surgery or osteopathic medicine and surgery or an applicant for licensure has entered into a voluntary agreement to restrict the practice of medicine and surgery or osteopathic medicine and surgery in another state, district, territory, country, or an agency of the federal government. A certified copy of the voluntary agreement shall be considered prima facie evidence.

86 Acts, ch 1211, §17; 92 Acts, ch 1183, §19; 2005 Acts, ch 89, §14; 2007 Acts, ch 10, §97; 2008 Acts, ch 1088, §55

148.13 Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.

1. The board of medicine shall adopt rules setting forth in detail its criteria and procedures for determining the ineligibility of a physician to serve as a supervising physician under chapter 148C. The rules shall provide that a physician may serve as a supervising physician under chapter 148C until such time as the board of medicine determines, following normal disciplinary procedures, that the physician is ineligible to serve in that capacity.

2. The board of medicine shall establish by rule specific procedures for consulting with

and considering the advice of the board of physician assistants in determining whether to initiate a disciplinary proceeding under chapter 17A against a licensed physician in a matter involving the supervision of a physician assistant.

3. In exercising their respective authorities, the board of medicine and the board of physician assistants shall cooperate with the goal of encouraging the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa.

4. The board of medicine shall adopt rules requiring a physician serving as a supervising physician to notify the board of medicine of the identity of a physician assistant the physician is supervising, and of any change in the status of the supervisory relationship.

88 Acts, ch 1225, §14; 2003 Acts, ch 93, §4, 5, 14; 2007 Acts, ch 10, §98

148.14 Board of medicine investigators.

The board of medicine may appoint investigators, who shall not be members of the board, and whose compensation shall be determined pursuant to chapter 8A, subchapter IV. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter, chapter 147, and chapter 272C.

2008 Acts, ch 1088, §56; 2009 Acts, ch 133, §55