



SCHULZ GEIERMANN BERGESON & GULER
LAW OFFICES, P.C.

July 27, 2011

Representative Kim Koppelman, Chairperson
Administrative Rules Committee
c/o ND Legislative Council
600 E Boulevard
Bismarck ND 58505

RE: North Dakota Board of Nursing

Dear Representative Koppelman:

I am the special assistant attorney general who represents the North Dakota Board of Nursing ("Board"). The Legislature in House Bill 1041 created a Nurse Aide Registry to be monitored by the North Dakota Department of Health ("Department"). As a result, effective July 1, 2011, responsibility for the registration of certain individuals employed to assist nurses was moved from the Board to the Department. In addition, the Legislature in Senate Bill 2148, effective August 1, 2011, removed the requirement for physician collaboration regarding the prescriptive authority of advanced practice registered nurses. Therefore, many of the rules currently adopted by the Board are obsolete and are not in compliance with the foregoing bills adopted by the Legislature.

In accordance with N.D.C.C. § 28-32-18.1, I request that you consider repealing or amending the following rules, in part or in whole, as applicable, previously adopted by the Board:

1. The following chapters have language that can be repealed: Chapters 54-01-03, 54-02-07, 54-05-03.1, 54-07-01, 54-07-02, 54-07-02.1, and 54-07-05. For your convenience, I am enclosing excerpts of these chapters showing the language to be repealed.
2. Chapters 54-07-06.1 and 54-07-07 can be repealed in their entirety.
3. The term "medication assistant" throughout Title 54 should be changed to "medication assistant III", so that it is not confused with the term "medication assistant" as discussed in House Bill 1041.

I am currently scheduled, on behalf of the Board, to be present at your meeting on September 12, 2011, at 9:15 a.m. in the Roughrider Room at the State Capitol, to address this matter. As required by Section 28-32-18.1, the Board has provided notice

to the regulated community of the time and place of the meeting, specifically including notice to the North Dakota Nurses Association, North Dakota Nurse Practitioner Association, North Dakota Hospital Association, North Dakota Department of Health, and the North Dakota Long Term Care Association. In addition, the Board will include a notice on its website. I believe the repeal or amendment of the rules identified above is warranted, as the rules are obsolete and no longer in compliance with North Dakota law, and no detriment will result to the substantive rights of the regulated community from the repeal or amendment.

Please let me know if you have any questions regarding these rules to be repealed or amended, in part or in whole.

Sincerely,



Brian L. Bergeson
Special Assistant Attorney General
North Dakota Board of Nursing

ljd

cc: Constance B. Kalanek, Ph.D., R.N.
John Walstad, Revisor

Encl.

**CHAPTER 54-01-03
DEFINITIONS**

Section
54-01-03-01 Definitions

54-01-03-01. Definitions.

35. "Medication assistant" means an individual who has a current registration as an unlicensed assistive person, has had additional training in administration of medication, and possesses a current registration from the board as one of the following medication assistants:

a. ~~Medication assistant I is a person who has completed all the requirements for a medication assistant program I. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.~~

b. ~~Medication assistant II is a person who has completed additional training past the medication assistant program I and met all the requirements for a medication assistant program II. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.~~

e. a. Medication assistant III is a person who has completed two semesters of an approved nursing education program, each of which must have included a clinical nursing component, or a graduate of a board-recognized medical assistant program. A medication assistant III may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.

36. ~~"Medication assistant program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets board requirements.~~

50. ~~"Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty four hour period of time in a setting where nursing care is continuously delivered.~~

54. ~~"Routine, regularly scheduled medication" means the components of an identified medication regimen for an individual or groups of individuals with stable conditions which are administered on a routine~~

~~basis and do not require determination of need, drug calculation, or dosage conversion.~~

63. "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board ~~or included on another state registry, which has been recognized by the board~~ to perform nursing interventions delegated and supervised by a licensed nurse.

History: Effective June 1, 2002; amended effective April 1, 2004; August 1, 2005; July 1, 2008; April 1, 2011; **July 1, 2011.**

General Authority: NDCC 43-12.1-08(2)

Law Implemented: NDCC 43-12.1-08

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**CHAPTER 54-02-07
DISCIPLINARY ACTION**

Section

- 54-02-07-01 Definition of Unprofessional Conduct [Repealed]
- 54-02-07-01.1 Grounds for Discipline
- 54-02-07-02 Definitions [Repealed]
- 54-02-07-03 Complaints [Repealed]
- 54-02-07-03.1 Reporting Violations
- 54-02-07-04 Investigation
- 54-02-07-04.1 Evidence and Evaluation of Treatment
- 54-02-07-05 Settlements [Repealed]
- 54-02-07-05.1 Disposition
- 54-02-07-05.2 Emergency Suspension
- 54-02-07-05.3 Voluntary Surrender
- 54-02-07-05.4 Cease and Desist Order
- 54-02-07-06 Board Decision
- 54-02-07-07 Fees
- 54-02-07-08 Application for Reinstatement
- 54-02-07-09 Practice Without a License or Registration
- 54-02-07-10 Unlicensed Assistive Persons Without Registry Status [Repealed]
- 54-02-07-11 Applicant Statement
- ~~54-02-07-12 Unlicensed Assistive Persons on Board-Recognized Registries~~

~~**54-02-07-12. Unlicensed assistive persons on board-recognized registries.** Individuals listed on a board-recognized registry may be considered to be on the board's registry for purposes of investigation of an unlicensed assistive person and any board action that may result.~~

History: Effective December 1, 1995; amended effective June 1, 2002; July 1, 2008; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

**CHAPTER 54-05-03.1
ADVANCED PRACTICE REGISTERED NURSE**

Section	
54-05-03.1-01	Statement of Intent
54-05-03.1-02	Board Authority - Title - Abbreviation
54-05-03.1-03	De · nitions [Repealed]
54-05-03.1-03.1	Standards of Practice for the Advanced Practice Registered Nurse
54-05-03.1-03.2	Scope of Practice as an Advanced Practice Registered Nurse
54-05-03.1-04	Initial Requirements for Advanced Practice Registered Nurse Licensure
54-05-03.1-05	Temporary Permit
54-05-03.1-06	Requirements for Advanced Practice Registered Nurse Licensure Renewal
54-05-03.1-06.1	Reactivation of a License
54-05-03.1-06.2	Change in Scope of Practice
54-05-03.1-07	Disciplinary Action Against Advanced Practice Registered Nurse License [Repealed]
54-05-03.1-08	Prescriptive Authority Review Committee
54-05-03.1-09	Requirements for Prescriptive Authority
54-05-03.1-10	Authority to Prescribe
54-05-03.1-11	Prescriptive Authority Renewal
54-05-03.1-12	Change in Physician Collaboration Regarding Prescriptive Authority
54-05-03.1-13	Suspension or Enjoining of Prescriptive Authority
54-05-03.1-14	Encumbered License [Repealed]
54-05-03.1-15	Recognition at Effective Date

~~**54-05-03.1-08. Prescriptive authority review committee.** Prior to the first regular meeting after July first of each year, the board will request an appointment of a physician who holds a collaborative agreement with an advanced practice registered nurse to the prescriptive authority review committee from the board of medical examiners and the board of pharmacy. The board shall appoint two committee members, at least one of whom must be a registered nurse board member and one must be an advanced practice registered nurse with prescriptive authority, at the July board meeting. The committee will meet at least once each year to review rules for prescriptive authority, oversee the process of granting prescriptive authority, and recommend changes to the board. Reimbursement for the costs associated with attending the meetings will be the responsibility of the respective boards appointing the members.~~

History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004; **Repeal, July 1, 2011.**

General Authority: NDCC 43-12.1-18

Law Implemented: NDCC 43-12.1-18

54-05-03.1-09. Requirements for prescriptive authority. Applicants for prescriptive authority shall:

1. Be currently licensed as an advanced practice registered nurse in North Dakota.
2. Submit a complete, notarized prescriptive authority application and pay the fee of fifty dollars.

3. Submit a completed transcript with degree posted from an accredited graduate level advanced practice registered nurse program and which includes evidence of completion of advanced pharmacotherapy, physical assessment, and pathophysiology.
4. Provide evidence of completion of thirty contact hours of education or equivalent in pharmacotherapy related to the applicant's scope of advanced practice that:
 - a. Have been obtained within a three-year period of time immediately prior to the date of application for prescriptive authority; or
 - b. May otherwise be approved by the board.
5. ~~Submit an affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice. The affidavit must address all of the following areas:~~
 - a. ~~Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;~~
 - b. ~~Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but no less than once every two months;~~
 - c. ~~Methods of documentation of the collaboration process regarding prescriptive practices; and~~
 - d. ~~Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.~~

History: Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; April 1, 2004; March 24, 2004; April 1, 2011; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-02(7), 43-12.1-09(2)(c)(d)

~~**54-05-03.1-12. Change in physician collaboration regarding prescriptive authority.** The advanced practice registered nurse or the collaborating physician may terminate the relationship at any time. The advanced practice registered nurse must notify the board in writing within five working days of the termination. An affidavit of collaboration with another licensed physician must be submitted when there is a change in the licensed physician providing the collaboration. The affidavit and a revised scope of practice statement must be submitted within sixty days of the change in collaboration with a licensed physician.~~

History: Effective March 1, 1992; amended effective November 1, 1996; Repeal July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

54-05-03.1-13. Suspension or enjoining of prescriptive authority. The

prescriptive authority granted to an advanced practice registered nurse may be temporarily suspended or enjoined according to provisions of North Dakota Century Code chapters 28-32 and 32-06, when the advanced practice registered nurse has:

1. Failed to maintain current licensure as an advanced practice registered nurse or failed to meet prescriptive authority requirements;
2. Prescribed outside the scope of practice or for other than therapeutic purposes;
3. Violated any state or federal law or regulation applicable to prescriptions; or

Following final board action notice of suspension or injunctive action regarding prescriptive authority will be forwarded to the board of pharmacy. ~~and the collaborating physician.~~

History: Effective March 1, 1992; amended effective November 1, 1996. July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

**ARTICLE 54-07
UNLICENSED ASSISTIVE PERSON**

Chapter	
54-07-01	General Provisions
54-07-02	Unlicensed Assistive Registry
54-07-02.1	Criminal History Record Checks for Registration
54-07-03	Nursing Tasks and Nursing Functions [Repealed]
54-07-03.1	Unlicensed Assistive Competence
54-07-04	Nurse Assistant Disciplinary Action [Repealed]
54-07-05	Medication Administration by a Medication Assistant
54-07-06	Medication Assistant Program Requirements [Repealed]
54-07-06.1	Medication Assistant Program I Requirements
54-07-07	Medication Assistant Program II Requirements
54-07-08	Specific Delegation of Medication Administration

**CHAPTER 54-07-01
GENERAL PROVISIONS**

Section	
54-07-01-01	Statement of Intent
54-07-01-02	Definitions [Repealed]
54-07-01-03	Recognition of Other State Registries
54-07-01-04	Medicaid Waiver Recipient Service Providers

~~**54-07-01-03. Recognition of other state registries.** The board will acknowledge placement on other state registries in lieu of the unlicensed assistive person registry. Criteria for recognition of other state registries is as follows:~~

- ~~1. The registry is open to the public during normal business hours.~~
- ~~2. The registry contains information about the individual that meets or exceeds the requirements for the unlicensed assistive person registry.~~
- ~~3. The registry provides a mechanism for removal of the individual for cause, or marking of the registry of disciplinary action by the board.~~
- ~~4. The agency operating the registry has submitted sufficient documentation to the board of nursing to verify compliance with these requirements.~~

History: Effective November 1, 1992; amended effective September 1, 1994; December 1, 1995; June 1, 2002; **Repeal July 1, 2011.**

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-01-04. Medicaid waiver recipient service providers. A person who provides services authorized by North Dakota Century Code section 50-24.1-18.1 to individuals found eligible by the department of human services to direct their own care or to individuals who have designated a legally responsible person to make health care decisions on their behalf shall be required to register as an

**CHAPTER 54-07-02
UNLICENSED ASSISTIVE REGISTRY**

Section	
54-07-02-01	Unlicensed Assistive Person Registry
54-07-02-01.1	Renewal of Registration
54-07-02-02	Disciplinary Action of Registry Listing [Repealed]
54-07-02-02.1	Unlicensed Assistive Person Registry Status
54-07-02-02.2	Reactivation of a Registration
54-07-02-03	Limited Registration

54-07-02-02.1. Unlicensed assistive person registry status.

1. Unlicensed assistive persons who carry out delegated nursing interventions must hold current registry status. An unlicensed assistive person may not work as an unlicensed assistive person with an expired registration.
2. ~~Individuals holding current registry status on a board recognized registry meet this requirement.~~
3. Individuals who are employed to perform nursing interventions delegated by a licensed nurse who have never held registry status have four months from the date of initial employment to achieve registry status.

History: Effective February 1, 1998; amended effective June 1, 2002; April 1, 2004; July 1, 2008; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08

CHAPTER 54-07-02.1
CRIMINAL HISTORY RECORD CHECKS FOR REGISTRATION

Section

54-07-02.1-01 Criminal History Record Checks

54-07-02.1-01. Criminal history record checks. Individuals must submit a set of fingerprints to the board or its agent for the purpose of obtaining a state and federal criminal history record check in the manner provided by North Dakota Century Code section 12-60-24 and as set forth by the board. An authorization and release form must be signed by the applicant authorizing the release of the criminal history record information to the board. The fingerprint card, authorization and release form, and fee for the criminal history record check must be submitted with the application.

1. The following individuals for registration must submit to a criminal history record check:

- a. Applicants for initial unlicensed assistive person registration.
- b. Applicants for reactivation or reinstatement of unlicensed assistive person or medication assistant registration.
- c. ~~Applicants for initial medication assistant registration who are not currently registered as a certified nurse aide by the North Dakota state department of health or current on the unlicensed assistive person registry and has not been subjected to a criminal history record check for the purpose of registration.~~

2. The following individuals for registration may be required to submit to a criminal history record check:

- a. Applicants for renewal of unlicensed assistive person.
- b. Applicants for medication assistant registration.
- c. An individual who is under investigation for violation of North Dakota Century Code chapter 43-12.1. If a criminal history record check is required as part of a disciplinary investigation or proceeding, the fingerprint card, authorization and release form, and fee for the criminal history record check must be submitted within twenty days of the request.

History: Effective July 1, 2008; **amended effective July 1, 2011.**

General Authority: NDCC 12-60-24.2(o), 43-12.1-08(1)

Law Implemented: NDCC 43-12.1-09.1

**CHAPTER 54-07-05
MEDICATION ADMINISTRATION BY A MEDICATION ASSISTANT**

Section

- 54-07-05-01 Statement of Intent
- 54-07-05-02 Definitions [Repealed]
- 54-07-05-03 Medication Management Regimen
- 54-07-05-04 Requirements for Supervision
- 54-07-05-05 Eligibility for Medication Assistant Registration
- 54-07-05-06 Medication Assistant Registration Renewal
- 54-07-05-07 Reactivation of a Lapsed Medication Assistant Registration
- 54-07-05-08 Medication Assistant Registration Disciplinary Action
- 54-07-05-09 Routes or Types of Medication Administration
- 54-07-05-10 Pro Re Nata Medications
- 54-07-05-11 Medication Interventions That May Not Be Delegated

54-07-05-01. Statement of intent. North Dakota Century Code chapter 43-12.1 allows the licensed nurse to delegate and supervise nursing interventions to individuals authorized by the board to perform those functions. Medication administration is a nursing intervention. Medication administration is the responsibility of licensed nurses and requires the knowledge, skills, and abilities of the licensed nurse to ensure public safety and accountability. Unlicensed assistive persons ~~who have completed a prescribed training program in medication administration or~~ who have been delegated the delivery of a specific medication for a specific client may perform the intervention of giving or applying routine, regularly scheduled medications to the client. The medication assistant III may perform the intervention of administering medications to the client in an ambulatory health care setting. The licensed nurse must be available to monitor the client's progress and effectiveness of the prescribed medication regimen. Delegation of medication administration in acute care settings or for individuals with unstable or changing nursing care needs is specifically precluded by these rules.

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

54-07-05-05. Eligibility for medication assistant registration. An ~~application for registration as a medication assistant I or II and a thirty dollar fee must be submitted by the applicant to the board office.~~ An application for registration as a medication assistant III and a forty dollar fee must be submitted by the applicant to the board office. The applicant for medication assistant registration must have registration on the unlicensed assistive person registry. Upon receipt of the required materials, a medication assistant registration, ~~that reflects the type of program completed,~~ will be issued to correspond with the applicant's registration as an unlicensed assistive person.

1. ~~Unlicensed assistive persons may obtain initial medication assistant I registration by:~~

- a. ~~Successfully completing a board approved medication assistant program I; or~~
- b. ~~Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board approved medication assistant program I curriculum.~~
- 2. ~~Unlicensed assistive persons may obtain initial medication assistant II registration by:~~
 - a. ~~Successfully completing a board approved medication assistant program II; or~~
 - b. ~~Submitting evidence of successful completion of a medication assistant program in another state equal in content to a board approved medication assistant program II curriculum.~~
- 3. ~~Unlicensed assistive persons successfully completing a medication assistant program prior to August 1, 1999, are not subject to the initial medication assistant I registration requirements in subsection 1.~~
- 4. 1 Unlicensed assistive persons may obtain initial medication assistant III registration by:
 - a. Submitting evidence of successful completion of two semesters of an approved nursing education program, each of which must have included a clinical nursing component. The two semesters combined must have included basic clinical skills, basic pharmacology, principles of medication administration, and mathematics competency; or
 - b. Submitting evidence of:
 - (1) Successful completion of a board-recognized medical assistant program; and
 - (2) Certification from the American association of medical assistants or its successor organization awarding the certified medical assistant credential or registration from the American medical technologists or its successor organization awarding the registered medical assistant credential.

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; **July 1, 2011.**

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(1)

54-07-05-06. Medication assistant registration renewal. The medication assistant registration expiration date must correspond to the individual's unlicensed assistive person registration expiration date and must be renewable at the same time that the unlicensed assistive person registration is renewed. Medication assistant registry listing renewal requires verification of continued competence. An enrolled nursing student or unlicensed graduate of an approved nursing education program may renew with the clinical practice hours in the nursing program within the past two years. The graduate from a board-recognized medical assistant program must show evidence of current certification from the American association

of medical assistants or successor organization or current registration from the American medical technologists or successor organization.
~~Unlicensed assistive persons who have completed a medication assistant program prior to August 1, 1999, and unlicensed assistive persons who have completed either the medication assistant program I or the medication assistant program II after that date are not required to retake the program prior to renewing registration at the same level.~~

History: Effective September 1, 1994; amended effective February 1, 1998; May 1, 1999; April 1, 2004; August 1, 2005; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

54-07-05-07. Reactivation of a lapsed medication assistant registration. An individual with previous medication assistant training who has not performed medication assistant duties within the last two years and was previously registered in North Dakota who applies for reactivation must meet board requirements, including the following:

1. Complete the application and submit to a criminal history record check according to section 54-02.1-01.
2. Pay the nonrefundable renewal fee and thirty dollar reactivation fee; and
3. Demonstrate performance of medication administration to a licensed Nurse. ~~within the employing facility by satisfactory completion of a board approved clinical skills checklist; or~~
4. ~~Complete a board approved medication assistant program I or II that is appropriate to the practice setting; or~~
5. 4. Submit documentation of continued competency and verification of current certification from the American association of medical assistants or successor organization or current registration from the American medical technologists or successor organization.

History: Effective September 1, 1994; amended effective May 1, 1999; April 1, 2004; August 1, 2005; July 1, 2008; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

54-07-05-09. Routes or types of medication administration.

1. Administration of the initial dose of a medication that has not been previously administered to the client must be administered according to organization policy.
2. Medication assistant students and medication assistants may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to organization policy:
 - a. Oral, sublingual, and buccal medications;

- b. Eye medications;
 - c. Ear medications;
 - d. Nasal medications;
 - e. Rectal medications and enemas;
 - f. Vaginal medications;
 - g. Skin ointments, topical medications, including patches and transdermal medications;
 - h. Metered hand-held inhalants; and
 - i. Unit dose nebulizers.
3. Medication assistants III may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to organization policy:
- a. Intramuscular injections;
 - b. Subcutaneous injections;
 - c. Intradermal injections;
 - d. Gastrostomy; and
 - e. Jejunostomy.
4. ~~Medication assistants I or II may administer medications by the following routes only when specifically delegated by a licensed nurse for a specific client:~~
- ~~a. Gastrostomy;~~
 - ~~b. Jejunostomy;~~
 - ~~c. Subcutaneous; and~~
 - ~~d. Premeasured injectable medication for allergic reactions.~~
5. ~~Medication assistant students and medication assistants I or II may not administer medications by the following routes:~~
- ~~a. Central lines;~~
 - ~~b. Colostomy;~~
 - ~~c. Intramuscular injection;~~
 - ~~d. Intravenous;~~
 - ~~e. Intravenous lock;~~
 - ~~f. Nasogastric tube;~~
 - ~~g. Nonmetered inhaler;~~
 - ~~h. Intradermal;~~
 - ~~i. Nonunit dose aerosol/nebulizer; or~~
 - ~~j. Urethral catheter.~~
6. 4 Medication assistants III may not administer medications by the following routes:
- a. Central lines;
 - b. Colostomy;
 - c. Intravenous;
 - d. Intravenous lock;
 - e. Nasogastric tube;
 - f. Nonmetered inhaler;
 - g. Nonunit dose aerosol/nebulizer; or

- h. Urethral catheter.
- 7. **5.** Medication assistant students and medication assistants may not administer the following kinds of medications:
 - a. Barium and other diagnostic contrast media;
 - b. Chemotherapeutic agents except oral maintenance chemotherapy;
or
 - c. Through any medication pumps, nor assume responsibility for medication pumps, including client-controlled analgesia.

History: Effective May 1, 1999; amended effective April 1, 2004; August 1, 2005; July 1, 2008; July 1, 2011.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)