

NORTH DAKOTA ADMINISTRATIVE CODE

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**Prepared by the Legislative Council staff
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TITLE 20
STATE BOARD OF DENTAL EXAMINERS

JULY 2017

CHAPTER 20-01-02

20-01-02-01. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Advertising" means any public communication, made in any form or manner, about a licensee's professional service or qualifications, for the purpose of soliciting business.
2. "Anxiolysis" means diminution or elimination of anxiety.
3. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
4. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
5. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
6. "Bona fide specialties" means the specialties of dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics.
7. "Cardiopulmonary resuscitation course" means the American heart association's health care provider course, the American red cross professional rescuer course, or an equivalent course.
8. "Certified dental assistant" means a dental assistant who meets the education or experience prerequisites, or both, established by the dental assisting national board and passes the dental assisting national board's certified dental assistant examination ~~(including radiation health and safety, infection control, and general chairside components)~~, is currently cardiopulmonary resuscitation-certified, and continues to maintain the credential by meeting the dental assisting national board requirements. A certified dental assistant must be

registered by the board as a qualified dental assistant or registered dental assistant to provide any expanded duties.

9. "Code of ethics" means the January 2009 version of the American dental association's principles of ethics and code of professional conduct.
10. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-ental conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

11. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.
12. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.
13. "Contiguous supervision" means that the ~~supervising oral and maxillofacial surgeon~~ dentist whose patient is being treated and has personally authorized the procedures to be performed. The supervising ~~oral surgeon~~ dentist is continuously onsite and physically present in the treatment facility while the procedures are performed by the dental anesthesia auxiliary and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.
14. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation.
15. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.
16. ~~"Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.~~

- ~~17.~~ "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

- ~~18-17.~~ "Direct visual supervision" means supervision by ~~an oral and maxillofacial surgeon~~ a dentist by verbal command and under direct line of sight.
- ~~19-18.~~ "Evaluation" means the act or process by a dentist of assessing and determining the ~~significance, quality or work of something such as the~~ patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
- ~~20-19.~~ "General anesthesia" means an induced state of ~~unconsciousness~~ unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.
- ~~21-20.~~ "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis, if necessary, and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.
- ~~22-21.~~ "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.
- ~~23-22.~~ "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
- ~~24-23.~~ "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
- ~~25-24.~~ "Oral assessment" means the evaluation of data pertaining to the patient's condition to help identify dental problems leading to a professional treatment plan. The final diagnosis of disease or treatment plan is the sole responsibility of the supervising or collaborative dentist.
- ~~26-25.~~ "Oral hygiene treatment planning" is a component of a comprehensive treatment plan developed by the hygienist or dentist to provide the hygienist a framework for addressing the preventative, educational, and clinical treatment needs of the patient.
- ~~27-26.~~ "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- ~~28-27.~~ "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the biennial registration.
28. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant and has received at least six hundred fifty hours of on-the-job training, has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the dental assisting national board examination, and has applied to the board and paid the certificate fee and met any other requirements of section 20-03-01-05.
29. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program accredited by the commission on dental accreditation of the American dental association or a substantially equivalent curriculum approved by the board or has been certified by the dental assistant national board, and has applied to the board and paid the registration fee and met any other requirements of section 20-03-01-05.

~~29.~~30. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017.

General Authority: NDCC 43-20-10; 43-28-06

Law Implemented: NDCC 43-20, 43-28

CHAPTER 20-02-01 GENERAL REQUIREMENTS

Section

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20-02-01-03.1. Additional requirements for licensure by examination.

The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-10.1 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examinations or the national dental examining board of Canada within five years of application.
2. The applicant has passed, within five years of application, a clinical competency examination approved by the board. Required ~~component~~components shall include a patient-based periodontal component, a patient-based restorative component, and an endodontic component, ~~administered by one or more of the following:~~
 - ~~a. Central regional dental testing service.~~
 - ~~b. Council of interstate testing agencies.~~
 - ~~c. Northeast regional examining board.~~
 - ~~d. Southern regional testing agency.~~
 - ~~e. Western regional examining board.~~
3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.
4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-10.1

20-02-01-04. Temporary license to practice dentistry.

The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. Between meetings of the board, the executive director of the board may review the temporary license application and grant a provisional license if all requirements are met.

1. A temporary license to practice dentistry in North Dakota may be granted to a dentist when the dentist:
 - a. Has applied to the board as prescribed in North Dakota Century Code section 43-28-11.
 - b. Has paid the nonrefundable application and license fee that may be prescribed by the board.
 - c. Holds an active dental license in another jurisdiction, has been a full-time student or resident of a dental program accredited by the American dental association's commission on dental accreditation within the last six months and provides evidence of a diploma from a program accredited by the commission on dental accreditation of the American dental association and meets any other requirements to receive a license to practice dentistry under section 20-02-01-03.1, and 20-02-01-03.2, or has held a North Dakota dental license within the previous five years.
 - d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that the dentist's license is unencumbered, unrestricted, and that the dentist's professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.
 - e. Has certified that no disciplinary actions are pending in other states or jurisdictions.
 - f. Has authorized the board to seek information concerning the dentist's professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.
 - g. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06.
 - h. The board shall require a criminal background check if the licensee anticipates practicing for a period greater than ten days.
2. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.
3. The board may restrict the licensee to engage in dental practice, as may be limited above, only at certain and specifically defined practice locations.
4. The board may require the North Dakota jurisprudence examination.

History: Effective February 1, 1992; amended effective October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-04.3. Inactive status - License reinstatement.

A dentist may, upon payment of the fee determined by the board, place the dentist's license on inactive status. A dentist on inactive status shall be excused from the payment of renewal fees, except inactive status renewal fees, and continuing education. A dentist on inactive status shall not practice in North Dakota. To reinstate a license on inactive status, the dentist shall apply on the form [aas](#) prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a regional dental testing service, approved by the board in section 20-02-01-03.1, within five years application. The board may, within the board's discretion, waive this requirement.
2. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.
4. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.
5. Grounds for denial of the application under North Dakota Century Code section 43-28-18 do not exist.

History: Effective April 1, 2006; amended effective January 1, 2011; [July 1, 2017](#).

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-17

20-02-01-05. Permit for anesthesia use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists [or a dentist who collaborates with a qualified and licensed anesthesia or sedation provider](#). The standards specified in this chapter shall apply equally to general anesthesia, deep sedation, moderate (conscious) sedation, or a combination of any of these with inhalation, but do not apply to sedation administered through inhalation alone. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use any form of sedation if the intent is beyond anxiolysis on any patient unless such dentist has a permit, currently in effect, issued by the board, and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, moderate (conscious) sedation, or minimal sedation when used in combination with inhalation.
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
 - a. The board of dental examiners approves the applicant's facility and any other facility, clinic, or mobile dental clinic where anesthesia services are provided after an inspection conducted by an individual or individuals designated by the dental examiners;
 - b. The board of dental examiners is satisfied that the applicant is in compliance with the American dental association's most recent policy statement: the use of sedation and general anesthesia by dentists;
 - c. The initial application includes payment of a fee in the amount determined by the dental examiners; and
 - d. If the application appears to be in order, the board may issue a temporary permit prior to the site evaluation. The temporary permit may be revoked if the applicant fails the site

inspection or if the applicant fails to cooperate with the timely scheduling of the site inspection.

3. The board of dental examiners may renew such permit biennially, provided:
 - a. Requirements of the permit application have been met;
 - b. Application for renewal and renewal fee is received by the dental examiners before the date of expiration of such permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board shall apply; and
 - c. An onsite evaluation of the dentist's facility may be conducted by an individual designated by the board of dental examiners, and the board of dental examiners must approve the results of each such evaluation. Each facility where anesthesia is administered must be evaluated.
4. The A North Dakota licensed anesthesia or sedation provider authorized by the board shall reevaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder within every five years following a successful initial application or renewal.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-06. Continuing dental education for dentists.

Each dentist shall provide evidence on forms supplied by the board that the dentist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than sixteen hours from publications and self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from online education. The continuing education must include:
 - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.
 - d. For anesthesia permitholders, four hours related to sedation or anesthesia.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.

5. All dentists must hold a current cardiopulmonary resuscitation certificate. Anesthesia permitholders are required to maintain current advanced cardiac life support certification or pediatric advanced life support as specified by permit.
6. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.
7. A dentist who maintains a license on inactive status is not subject to continuing education requirements.

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06, 43-28-16.2

20-02-01-11. Permit for the use of dermal fillers and botulinum toxin for dental use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in North Dakota Century Code section 43-28-01(7). Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a permit to a dentist who applies on forms prescribed by the board and pays the initial fee or biennial renewal fee as required by section 20-05-01-01(1) to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic, and aesthetic dental treatment purposes under the following conditions:
 - a. The dentist provides evidence that demonstrates:
 - (1) The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the commission on dental accreditation of the American dental association; or
 - (2) The applicant has successfully completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic, and peripheral nervous systems relative to the peri-oral tissue, and facial architecture, and:
 - (a) Patient assessment and consultation for botox and dermal fillers;
 - (b) Indications and contraindications for techniques;
 - (c) Proper preparation and delivery techniques for desired outcomes;
 - (d) Enhancing and finishing esthetic dentistry cases with dermal fillers;
 - (e) Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;
 - (f) Knowledge of adverse reactions and management and treatment of possible complications;
 - (g) Patient evaluation for best esthetic and therapeutic outcomes;

- (h) Integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and
- (i) Live patient hands-on training, including diagnosis, treatment planning, and proper dosing and delivery of botox and dermal fillers.

History: Effective April 1, 2015; amended effective July 1, 2017.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-02

20-02-01-12. Dental prescribers and use of the prescription drug monitoring program.

Subject to the exceptions described in section 20-02-01-13, prior to the initial prescribing of any controlled substance, including samples, a dentist authorized by the drug enforcement administration to prescribe, administer, sign for, dispense, or procure pharmaceuticals shall authorize an employee to review or personally request and review the prescription drug monitoring program report for all available prescription drug monitoring program data on the patient within the previous twelve months, and shall do all of the following:

1. Assess a patient's drug monitoring program data every twelve months during the patient's treatment with a controlled substance.
2. Review the patient's prescription drug monitoring program data if the patient requests early refills or demonstrates a pattern of taking more than the prescribed dosage.
3. Review the patient's prescription drug monitoring program data if there is a suspicion of or a known drug overuse, diversion, or abuse by the patient.
4. Document the assessment of the patient's prescription drug monitoring program data.
5. Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence.
6. Request and review prescription drug monitoring program data on the patient if the practitioner becomes aware that a patient is receiving controlled substances from multiple prescribers.
7. Request and review the patient's prescription drug monitoring program data if the prescriber has a reasonable belief that the patient may be seeking the controlled substance, in whole or in part, for any reason other than the treatment of an existing medical condition.

History: Effective July 1, 2017.

General Authority: NDCC 19-03.5-09, 43-28-01(7), 43-28-06

Law Implemented: NDCC 19-03.5-09, 43-28-06

20-02-01-13. Exceptions to the review requirement.

A practitioner may not be required to review a patient's prescription drug monitoring program data if any of the following apply:

1. The controlled substance is prescribed or dispensed for a patient who is currently receiving hospice care.
2. The controlled substance is prescribed or dispensed to a patient of record as a nonrefillable prescription as part of treatment for a surgical procedure.

3. The dentist prescribes a controlled substance after the performance of oral surgery and no more than a seventy-two hour supply of the controlled substance is prescribed.
4. The dentist prescribes pre-appointment medication for the treatment of procedure anxiety.
5. The dentist obtains a report through a board-approved risk assessment tool for health care providers that accesses patient prescription information from prescription drug monitoring program databases, analyzes the data, and provides a risk-based score that includes prescription drug monitoring program data.

History: Effective July 1, 2017.

General Authority: NDCC 43-28-01(7), 43-28-06

Law Implemented: NDCC 19-03.5-09, 43-28-06(1)

CHAPTER 20-03-01

20-03-01-01. Duties.

A dental assistant may perform the duties listed in subsections 1 through 5 under direct, indirect, or general supervision of a dentist as follows:

1. A dental assistant who is not registered with the board employed by a dentist may perform the following duties under direct supervision:
 - a. Take and record pulse, blood pressure, and temperature.
 - b. Take and record preliminary dental and medical history for the interpretation by the dentist.
 - c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
 - d. Receive removable dental prosthesis for cleaning or repair.
 - e. Take impressions for study casts.
 - f. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).
2. A qualified dental assistant may perform the duties set forth in subsection 1 and take dental radiographs under the direct supervision of a dentist.
3. A registered dental assistant may perform the duties set forth in subsection 2 and the following duties under the direct supervision of a dentist:
 - a. Place and remove arch wires or appliances that have been activated by a dentist.
 - b. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.
 - c. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
 - d. Take face bow transfers.
 - e. Place and remove matrix bands and wedges.
 - f. Adjust permanent crowns outside of the mouth.
 - g. Orally transmit a prescription that has been authorized by the supervising dentist.
 - h. Administer emergency medications to a patient in order to assist the dentist in an emergency.
4. A registered dental assistant may perform the following duties under the direct or indirect supervision of a dentist:
 - a. Apply anticariogenic agents topically.
 - b. Apply desensitizing solutions to the external surfaces of the teeth.
 - c. Dry root canal with paper points.

- d. Place and remove rubber dams.
- e. Take occlusal bite registration for study casts.
- f. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
- g. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
- h. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.
- i. Place and remove periodontal dressings, dry socket medications, and packing.
- j. Monitor a patient who has been inducted by a dentist into nitrous oxide relative analgesia.
- k. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
- l. Preselect and prefit orthodontic bands.
- m. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
- n. Take dental radiographs.

5. A registered dental assistant may perform the following duties under the direct, indirect, or general supervision of a dentist:
- a. Take and record pulse, blood pressure, and temperature.
 - b. Take and record preliminary dental and medical history for the interpretation by the dentist.
 - c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
 - d. Receive removable dental prosthesis for cleaning or repair.
 - e. Take impressions or occlusal bite registrations for study casts.
 - f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
 - g. Remove sutures.
 - h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
 - i. Provide oral hygiene education and instruction.
 - j. Provide an oral assessment for interpretation by the dentist.
 - k. Repack dry socket medication and packing for palliative treatment.

- l. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.
- m. Polish the coronal surfaces of the teeth with a rubber cup or brush.
- n.. Polish restorations with a slow-speed handpiece.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.1. Expanded duties of registered dental assistants.

A registered dental assistant shall apply for a permit to perform the following duties:

1. A registered dental assistant under the direct supervision of a dentist may perform the following restorative functions:
 - a. Place, carve, and adjust class I, II, and class V ~~supragingival~~-amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
 - b. Adapt and cement stainless steel crowns; and
 - c. Place, contour, and adjust class I, II, and class V ~~supragingival~~-composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.
2. A registered dental assistant authorized by permit and under the contiguous supervision of ~~an oral and maxillofacial surgeon~~ a dentist authorized by permit to provide parenteral sedation may provide anesthesia duties as follows:
 - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; ~~and~~
 - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open;
 - c. Prepare anesthesia equipment and perform patient monitoring; and
 - d. Assist with emergency treatment and protocols.
3. A registered dental assistant authorized by permit and under the direct visual supervision of ~~an oral and maxillofacial surgeon~~ a dentist authorized by permit to provide parenteral sedation shall provide anesthesia duties as follows:
 - a. Draw up and prepare medications;
 - b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;
 - c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and
 - d. Adjust an electronic device to provide medications, such as an infusion pump upon verbal command of the supervising dentist.

History: Effective April 1, 2015; amended effective July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-05.1. Additional expanded duties of registered dental assistants.

The board may grant a permit to a registered dental assistant for the following:

1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist ~~who specializes in oral and maxillofacial surgery, and meets the following requirements~~authorized by permit to provide parenteral sedation, upon successful completion of the following:
 - a. The applicant submits evidence ~~on forms prescribed by the board that the applicant meets any of the following requirements:~~
 - ~~(1) The applicant has completed~~of a board-approved dental anesthesia assistant education and training course ~~within one year of application and has proof of current certification status from a board-approved competency examination.~~
 - ~~(2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.~~
 - b. ~~The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines;~~Submits proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination.
 - c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
 - d. The applicant provides a copy of a valid North Dakota general anesthesia permit or parenteral sedation permit of the ~~oral and maxillofacial surgeon~~dentist where the registered dental assistant will be performing anesthesia assistant services.
2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide parenteral sedation, upon successful completion of the following:
 - a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course and submitting proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination;
 - b. The applicant has successfully completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;
 - c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
 - d. The applicant provides a copy of a valid North Dakota general anesthesia or parenteral sedation permit of the dentist where the registered dental assistant will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:

- a. The applicant meets any of the following requirements:
 - (1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, ~~and successfully completed.~~ The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or
 - (2) The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provide evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.
- b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

History: Effective April 1, 2015; amended effective July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-13.2

20-03-01-06. Continuing dental education for qualified and registered dental assistants.

Each qualified or registered dental assistant shall provide evidence on forms supplied by the board that the qualified or registered dental assistant has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor. Cardiopulmonary resuscitation courses must provide

hands-on training. All other continuing education requirements may be satisfied from publications and online education. The continuing education must include:

- a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.
 - d. For registered dental anesthesia assistant permit holders, two hours related to sedation or anesthesia.
 - e. For registered dental restorative assistant permit holders, two hours related to restorative dentistry.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
 5. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.
 6. The board may audit continuing education credits of a registered dental assistant. Proof of continuing education shall be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, a registered dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-13.1

CHAPTER 20-04-01

20-04-01-01. Duties.

A dental hygienist may perform the following services under the general, direct, ~~or direct visual,~~ indirect, or contiguous supervision of a dentist:

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations with a slow-speed handpiece.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Provide oral hygiene treatment planning after an oral assessment of dentist's diagnosis.
8. Take dental radiographs.
9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.
10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).
11. Receive removable dental prosthesis for cleaning and repair.
12. Dry root canal with paper points.
13. Place and remove rubber dams.
14. Place and remove matrix bands or wedges.
15. Take occlusal bite registration for study casts.
16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
18. Adjust permanent crowns outside of the mouth.
19. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
20. Apply pit and fissure sealants. Adjust sealants with slow speed handpiece.
21. Place and remove periodontal dressings, dry socket medications, and packing.
22. Remove sutures.
23. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.

24. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
25. Preselect and prefit orthodontic bands.
26. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
27. Place and remove arch wires or appliances that have been activated by a dentist.
28. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
29. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
30. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.
31. Take face bow transfers.
32. Orally transmit a prescription that has been authorized by the supervising dentist.
33. Repack dry socket medication and packing for palliative treatment.
34. Administer emergency medications to a patient in order to assist the dentist.
35. A dental hygienist authorized by ~~the board~~permit and under contiguous supervision of ~~an oral and maxillofacial surgeon~~a dentist authorized by permit to provide parenteral sedation may:
 - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; ~~and~~.
 - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.
 - c. Prepare anesthesia equipment and perform patient monitoring.
 - d. Assist with emergency treatment and protocols.
36. A dental hygienist authorized by ~~the board~~permit and under direct visual supervision of ~~an oral and maxillofacial surgeon~~a dentist authorized by permit to provide parenteral sedation may:
 - a. Draw up and prepare medications;
 - b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;
 - c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and
 - d. Adjust an electronic device to provide medications, such as an infusion pump upon the verbal command of the supervising dentist.
37. A dental hygienist under the direct supervision of a dentist may:
 - a. Place, carve, and adjust class I, II, and class V ~~supragingival~~ amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
 - b. Adapt and cement stainless steel crowns; and

- c. Place, contour, and adjust class I, II, and class V ~~supragingival~~ composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03, 43-20-11, 43-20-12

20-04-01-03.1. Duties of the dental hygienist requiring a permit.

The board may issue or renew a permit to a dental hygienist for the following:

1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist ~~who specializes in oral and maxillofacial surgery, and meets~~ authorized by permit to provide parenteral sedation, upon successful completion of the following ~~requirements:~~
 - a. The applicant submits evidence ~~on forms prescribed by the board that the applicant meets any of the following requirements:~~
 - ~~(1) The applicant has completed~~of a board-approved dental anesthesia assistant education and training course ~~within one year of application and has proof of current certification status from a board-approved competency examination.~~
 - ~~(2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.~~
 - b. The applicant ~~has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines~~ submits proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification, or a board-approved competency examination;
 - c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
 - d. The applicant provides a copy of a valid North Dakota general anesthesia or parenteral permit of the ~~oral and maxillofacial surgeon~~ dentist where the registered dental hygienist will be performing anesthesia assistant services.
2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide parenteral sedation, upon successful completion of the following:
 - a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course and has proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination;
 - b. The applicant has successfully completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;

- c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and
- d. The applicant provides a copy of a valid North Dakota general anesthesia or parenteral sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board ~~to authorize~~ authorizing a registered dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:

- a. The applicant meets any of the following requirements:
 - (1) The applicant has successfully ~~completes~~ completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, ~~and was successfully completed.~~ The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or
 - (2) ~~Successfully~~ The applicant has successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and ~~provides~~ successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provided evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the ~~previous~~ immediate five years ~~from~~ before the date of application.
- b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

History: Effective April 1, 2015; amended effective July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

20-04-01-07. Inactive status - License reinstatement.

A dental hygienist may, upon payment of the fee determined by the board, place the dental ~~hygienist's~~ hygienist's license on inactive status. A dental hygienist on inactive status shall be excused from the payment of renewal fees, except inactive status renewal fees, and continuing education. A dental hygienist on inactive status shall not practice in North Dakota. To reinstate a license on inactive status, the dental hygienist shall apply on a form prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a regional dental testing service, approved by the board in section 20-04-01-04, within two years of application. The board may, within the board's discretion, waive this requirement.
2. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
3. The applicant has completed sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.
4. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.
5. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

History: Effective January 1, 2011; amended effective July 1, 2017.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-06

20-04-01-08. Continuing dental education for dental hygienists.

Each dental hygienist shall provide evidence on forms supplied by the board that the dental hygienist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from ~~publications and~~ online education. The continuing education must include:
 - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.
 - d. For registered dental anesthesia hygienist permitholders, two hours related to sedation or anesthesia.
 - e. For registered dental restorative hygienist permitholders, two hours related to restorative dentistry.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

6. A dental hygienist who maintains a license on inactive status is not subject to continuing education requirements.

7. The board may audit the continuing education credits of a dental hygienist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

History: Effective January 1, 2011; amended effective April 1, 2015; [July 1, 2017](#).

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-01.4

TITLE 33
STATE DEPARTMENT OF HEALTH

JULY 2017

**CHAPTER 33-07-01.1
HOSPITALS**

Section

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33-07-01.1-01. General provisions - Definitions.

1. Institutions covered by medical hospital licensure laws. The following types of institutions are covered by North Dakota Century Code chapter 23-16 for the purpose of rules and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution that maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness, injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours:
 - a. General acute, primary care, and specialized hospitals, including rehabilitation ~~and~~ psychiatric, and outpatient birth hospitals.
 - b. Skilled nursing facilities and nursing facilities.
 - c. Outpatient facilities, including surgical centers and trauma centers, excluding physicians' clinics.
 - d. Maternity homes that receive more than one patient in six months.
2. Institutions not covered by medical hospital licensure laws. The following types of institutions that provide some medical or nursing service are deemed not to come within the provisions of North Dakota Century Code chapter 23-16:
 - a. Any institutions that are regularly licensed by the social service board of North Dakota, such as homes for unmarried mothers.
 - b. Federal and state institutions. For state institutions, the primary purpose of which is the provision of medical care, the department has the responsibility for inspection on the same basis as those institutions that are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the department.
 - c. Chiropractic hospitals licensed under North Dakota Century Code chapter 23-17.
 - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.
 - e. Homes in which only one person receives care at any one time.
3. An institution shall hold licensure in the same category for which it seeks federal certification.
4. The following terms are defined for purposes of this chapter and North Dakota Century Code chapter 23-16:
 - a. "Abuse" includes mental, physical, sexual, and verbal abuse which would result in temporary or permanent mental or physical injury, harm, or ultimately death. Mental abuse includes humiliation, harassment, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to patients or their families used within their hearing distance to describe the patients, regardless of their age, ability to comprehend, or disability.

- b. "Acute care" means care for an episode of illness, injury, deformity, or pregnancy which may have a rapid onset or be severe in nature or have a short duration which requires medical treatment and continuous nursing care in a hospital setting.
- c. "Authentication" means identification of the individual who made the medical record entry by that individual in writing, and verification that the contents are what the individual intended.
- d. "Bed capacity" is bed space designed for inpatient care.
 - (1) Areas to be included:
 - (a) Bed space in all nursing units, including:
 - [1] Intensive care or cardiac care units.
 - [2] Minimal or self-care units.
 - (b) Isolation units.
 - (c) Pediatrics units, including:
 - [1] Pediatric bassinets.
 - [2] Incubators located in the pediatrics department.
 - (2) Areas to be excluded:
 - (a) Newborn nurseries in the obstetrical department.
 - (b) Labor and delivery rooms.
 - (c) Recovery rooms.
 - (d) Emergency units.
 - (e) Preparation or anesthesia induction rooms.
 - (f) Rooms designed for diagnostic or treatment procedures.
 - (g) Hospital staff sleeping quarters, including accommodations for oncall staff.
- e. "Department" means the North Dakota state department of health.
- f. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the institution.
- g. "Hospital" means a facility that provides continuous nursing services, the principal activity or business of which is the reception of a person for diagnosis, medical care, and treatment of human illness to meet the needs of the patient served.
 - (1) "General acute hospital" means a facility with physician services available, permanent facilities that include inpatient beds, and continuous registered nurse staffing on a twenty-four-hour basis for treatment or care for illness, injury, deformity, abnormality, or pregnancy.
 - (a) In addition to medical staff and nursing services, the hospital shall regularly maintain either directly or through agreement the following services to meet the needs of the patients served:

- [1] Dietary services.
 - [2] Medical records services.
 - [3] Pharmaceutical services.
 - [4] Laboratory services.
 - [5] Radiology services.
 - [6] Emergency services.
 - [7] Social services.
 - [8] Basic rehabilitation services.
 - [9] Housekeeping and related services including laundry.
 - [10] Central services.
- (b) Complementary services are optional services which the hospital may provide and include:
- [1] Nuclear medicine services.
 - [2] Surgical services.
 - [3] Recovery services.
 - [4] Anesthesia services.
 - [5] Respiratory care services.
 - [6] Obstetrical services.
 - [7] Specialized rehabilitation services.
 - [8] Psychiatric services.
 - [9] Outpatient birth services.
- (2) "Primary care hospital" means a facility that has available twenty-four-hour licensed health care practitioner and nursing services, provides inpatient care to ill or injured persons prior to their transportation to a general acute hospital, or provides inpatient care to persons needing acute-type care for a period of no longer than an average of ninety-six hours, excluding persons participating in a federal swing-bed program.
- (a) In addition to medical staff and nursing services, the hospital shall regularly maintain either directly or through agreement the following services to meet the needs of the patients served:
- [1] Dietary services.
 - [2] Medical records services.
 - [3] Pharmaceutical services.
 - [4] Laboratory services.
 - [5] Radiology services.

- [6] Emergency services.
- [7] Social services.
- [8] Basic rehabilitation services.
- [9] Housekeeping and related services including laundry.
- [10] Central services.

(b) Complementary services are optional services that the hospital may provide and include:

- [1] Nuclear medicine services.
- [2] Surgical services.
- [3] Recovery services.
- [4] Anesthesia services.
- [5] Respiratory care services.
- [6] Obstetrical services.

(3) "Specialized hospital" means a facility with hospital characteristics which provides medical care for persons with a categorical illness or condition.

(a) In addition to medical staff and nursing services, the hospital shall regularly provide directly or through agreement the following services to meet the needs of the patients served:

- [1] Dietary services.
- [2] Medical records services.
- [3] Pharmaceutical services.
- [4] Laboratory services.
- [5] Radiology services.
- [6] Emergency services.
- [7] Social services.
- [8] Basic rehabilitation services.
- [9] Housekeeping and related services including laundry.
- [10] Central services.

(b) Complementary services are optional services which the hospital may provide and include:

- [1] Nuclear medicine services.
- [2] Surgical services.
- [3] Recovery services.

- [4] Anesthesia services.
- [5] Respiratory care services.
- [6] Obstetrical services.

(c) Hospitals meeting the definition of a specialized hospital shall be licensed as such and may include the following:

[1] "Psychiatric hospital" means a facility or unit providing psychiatric services to patients with a diagnosis of mental illness. A psychiatric hospital is a hospital licensed to provide only psychiatric services or is a distinct unit providing only psychiatric services located in a general acute hospital. Psychiatric hospitals must provide services consistent with section 33-07-01-36.

[2] "Rehabilitation hospital" means a facility or unit providing specialized rehabilitation services to patients for the alleviation or amelioration of the disabling effects of illness or injury. Specialized rehabilitation services are characterized by the coordinated delivery of interdisciplinary care intended to achieve the goals of maximizing the self-sufficiency of the patient. A rehabilitation hospital is a facility licensed to provide only specialized rehabilitation services or is a distinct unit providing only specialized rehabilitation services located in a general acute hospital. A rehabilitation hospital must arrange to provide the services identified in section 33-07-01-35.

[3] "Outpatient birth hospital" means a facility, separate from acute obstetric and newborn care, providing outpatient obstetrical, birthing, and neonatal services to patients. Outpatient birth services are organized to provide maternity care in which births are planned to occur in a setting away from the mother's usual residence following a low-risk pregnancy with anticipation of a low-risk birth. Low-risk pregnancy and birth means a normal uncomplicated birth as defined by generally accepted criteria of maternal and fetal health. A low-risk pregnancy and birth must be full term, singleton, and multipara, with vertex presentation.

h. "Level I nursery" means a well newborn nursery, consistent with American academy of pediatrics standards, providing a basic level of care to neonates who are low risk.

i. "Level II nursery" means a special care nursery, consistent with American academy of pediatrics standards, for stable or moderately ill newborn infants who are born at greater than or equal to thirty-two weeks gestation or who weigh greater than or equal to one thousand five hundred grams [52.91 ounces] at birth with problems that are expected to resolve rapidly and who would not be anticipated to need subspecialty-level services on an urgent basis.

j. "Level III nursery" means a neonatal intensive care unit, consistent with American academy of pediatrics standards, for infants who are born at less than thirty-two weeks gestation, weigh less than one thousand five hundred grams [52.91 ounces] at birth, or have medical or surgical conditions.

k. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.

i.l. "Licensee" means an individual, officer, or member of the governing body of a hospital or related institution.

j.m. "Medical staff" in general acute and specialized hospitals means a formal organization of physicians (and dentists) and may include other licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of patient care and to plan for continued improvement of that care. Medical staff in primary care hospitals means one or more licensed health care practitioners with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care.

k.n. "Misappropriation of patient property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a patient's belongings or money, or both.

t.o. "Neglect" includes one severe incident or a pattern of incidents of willful failure to carry out patient services as directed or ordered by the licensed health care practitioner, willful failure to give proper attention to patients, or failure to carry out patient services through careless oversight.

m.p. "Nursing facilities" are the following:

(1) "Basic care facility" means a facility consistent with North Dakota Century Code chapter 23-09.3 and North Dakota Administrative Code chapter 33-03-24.

(2) "Nursing facility" means a facility consistent with North Dakota Century Code chapter 23-16 and North Dakota Administrative Code chapters 33-07-03.1 and 33-07-04.1.

n.q. "Outpatient facility" (including ambulatory surgical centers and trauma centers - excluding physicians' clinic) means a facility, located in or apart from a hospital; providing community service for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients) in need of physical or mental care ~~(see chapter 33-03-04):~~

(1) Which is operated in connection with a hospital; or

(2) Which offers to patients not requiring hospitalization the services of licensed health care practitioners in various medical specialties, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services; ~~and~~

~~(3) Which is subject to the requirements of chapter 33-03-04.~~

o.r. "Qualified activities coordinator" means a qualified therapeutic recreation specialist who is eligible for registration as a therapeutic recreation specialist by the national therapeutic recreation society (branch of national recreation and park association) under its requirements; is a qualified occupational therapist as defined in North Dakota Century Code chapter 43-40; is certified as an occupational therapist assistant; or has two years of experience in a social or recreational program within the last five years, one year of which was as a full-time employee in a patient activities program in a health care setting; or has completed a training course approved by the department.

p.s. "Separate license for building on separate premises" means, in the case of a hospital or related institution where two or more buildings are used in the housing of patients, a separate license is required for each building. Separate licenses are required even though the buildings may be operated under the same management.

¶.t. "Signature" means the name of the individual written by the individual or an otherwise approved identification mechanism used by the individual which may include the approved use of a rubber stamp or an electronic signature.

¶.u. "Writing" means the use of any tangible medium for entries into the medical record, including ink or electronic or computer coding, unless otherwise specifically required.

History: Effective April 1, 1994; amended effective August 1, 1999; May 1, 2001; July 1, 2017.

General Authority: NDCC 23-01-03(3), 28-32-02

Law Implemented: NDCC 23-16-06, 31-08-01.2, 31-08-01.3

33-07-01.1-34.1. Outpatient birth services in hospitals.

1. General acute hospitals providing outpatient birth services in hospitals are subject to the outpatient birth services requirements for specialized hospitals in this section.

2. Primary care hospitals may not provide outpatient birth services.

3. Any facility that provides outpatient birth services shall comply with this section. A facility may not hold itself out to the public as providing outpatient birth services unless such outpatient birth service has been licensed by the department and meets the requirements for outpatient birth services in this section.

a. The facility provides peripartum care of low-risk women for whom prenatal and intrapartum history, physical examination, and laboratory screening procedures have demonstrated normal, uncomplicated singleton term (thirty-seven to forty-one and six-sevenths weeks), multipara pregnancies with a spontaneous labor, and vertex presentation that are expected to have an uncomplicated birth. The policy and procedures must specify medical and social criterion to determine risk status at admission and during labor.

b. Patients who are not considered low risk, patients who experience no cervical dilation in over three hours who are considered in active labor according to the American college of obstetricians and gynecologists standards, and patients who develop a high-risk condition based on standards of practice must be transferred as described in subsection 6.

c. Patients must be fully informed on and provide written consent to the benefits and risks of the services available and alternatives if more advanced services are required.

d. Surgical procedures must be limited to those procedures normally encountered during uncomplicated childbirth, such as episiotomy and repair, and must not include operative obstetrics or cesarean section. Circumcisions of newborns are allowed.

e. Labor may not be inhibited, stimulated, or augmented with chemical agents during the first or second stage of labor nor may labor be induced by artificial rupture of membranes.

f. Vacuum extractors, forceps, and recorded electronic fetal monitors are not appropriate for use after admittance in active labor in outpatient birth services. Patients requiring these interventions must be transferred as described in subsection 6.

g. General and conduction anesthesia may not be administered. Local anesthesia and pudendal block may be administered if procedures are established and approved by medical staff.

h. Emergency medications, equipment, and supplies must be available, including tocolytics and uterotonic medications. Nothing in the foregoing may be construed to prohibit exercise of medical skills or the use of emergency medications to benefit the mother or the baby in case of emergency. Patients requiring these interventions must be transferred as described in subsection 6.

i. Mothers and infants must be discharged within twenty-six hours after birth in accordance with standards set by the medical staff and specified in the policies and procedures. A program for prompt followup care and postpartum evaluation after discharge must be ensured and outlined in the policies and procedures. This program must include assessment of infant health, including physical examination laboratory and screening tests required by state law at the appropriate times, maternal postpartum status, instruction in child care including immunization, referral to sources of pediatric care, provision of family planning services, and assessment of mother-child relationship including breastfeeding.

4. The outpatient birth services shall ensure care is provided by licensed health care practitioners and nursing staff with access to and availability of consulting clinical specialists as follows:

a. Every birth must be attended by at least two health care professionals, licensed or certified consistent with state laws, with relevant experience, training, and demonstrated competence and who have maintained competence in basic life support, including fluid resuscitation and a neonatal resuscitation program to respond to patient needs.

b. The primary maternity care licensed health care practitioner who attends each birth shall be educated, licensed, and have approved clinical privileges to provide birthing services.

c. A licensed health care practitioner with relevant experience, training, and demonstrated competence shall be on call and readily available within a reasonable time of birth for resuscitation if needed.

d. A licensed health care practitioner with relevant experience, training, and demonstrated competence shall assess the neonate within twenty-four hours of delivery.

e. There must be adequate numbers of nursing staff who have completed orientation and demonstrated competence in the care of uncomplicated pregnancies with the ability to detect, stabilize, and initiate management of unanticipated maternal-fetal or neonatal problems that occur during the antepartum, intrapartum, or postpartum period until the patient can be discharged or transferred to a facility at which specialty maternal care is available.

5. An appropriately staffed level I nursery must be available on the premises.

6. There must be criteria and a written agreement for transfer of patients to an acute care hospital capable of providing inpatient obstetrical and neonatal services with a level II or level III nursery. The outpatient birth services must be located within thirty minutes of this hospital.

7. There must be provisions in place either directly or by agreement for transport services, obstetric consultation services, pediatric consultation services, and childbirth and parent education support services.

8. The outpatient birth service shall develop and implement policies and procedures to ensure physical security of mothers and newborns.

History: Effective July 1, 2017.

General Authority: NDCC 23-01-03(3), 28-32-02
Law Implemented: NDCC 23-16-06

TITLE 61
STATE BOARD OF PHARMACY

JULY 2017

CHAPTER 61-02-07.1

61-02-07.1-05. Tasks pharmacy technicians may perform.

1. Under the responsibility of the pharmacist-in-charge or designated staff pharmacist the pharmacy technician may perform any service assigned by the pharmacist-in-charge in the preparation of pharmaceuticals to be dispensed by the pharmacist to a patient except as specified in section 61-02-07.1-06.
2. The pharmacist is legally responsible for all the pharmacy technician's activities and services performed.
3. The pharmacy technician may assess a patient receiving a refilled prescription, on the need of the patient or the patient's agent, to have a consultation with the pharmacist or pharmacy intern about the prescription.
 - a. The assessment must include a visual display of the medication.
 - b. The assessment must include asking appropriate open-ended questions on the medication and their applicable health condition.
 - c. Any problematic responses must prompt the pharmacist to intervene with a consultation.

History: Effective October 1, 1993; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

**ARTICLE 61-04
PROFESSIONAL PRACTICE**

Chapter	
61-04-01	Return of Drugs and Devices Prohibited
61-04-02	Physician Exemption
61-04-03	Destruction of Controlled Substances
61-04-04	Unprofessional Conduct
61-04-05	Electronic Transmission of Prescriptions
61-04-05.1	Prescription Transfer Requirements
61-04-06	Prescription Label Requirements
61-04-07	Pharmacy Patient's Bill of Rights
61-04-08	Limited Prescriptive Practices
61-04-09	Warning Notice
61-04-10	CLIA Waived Laboratory Tests
61-04-11	Administration of Medications and Immunizations
61-04-12	Limited Prescriptive Authority for Naloxone
<u>61-04-13</u>	<u>Patient Consultation Requirements</u>

CHAPTER 61-04-13
PATIENT CONSULTATION REQUIREMENTS

Section

<u>61-04-13-01</u>	<u>Patient Consultation Requirements</u>
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61-04-13-01. Patient consultation requirements.

Each prescription dispensed by a pharmacy serving patients in the state and each out-of-state pharmacy providing prescriptions by mail to patients in the state must provide the following in regard to consultation:

1. Provide consultation by a pharmacist or intern on each new prescription dispensed.
2. Provide consultation by a pharmacist or intern on each refill prescription dispensed. Pursuant to section 61-02-07.1-05, screening a patient for consultation on a refilled prescription may be completed by a registered technician.
3. Counseling can be provided to the patient or their agent.
4. For a refilled prescription, when the patient or the patient's agent is not available at the time of dispensing, the pharmacy must supply written or electronic materials and a toll-free phone number for the patient or the patient's agent to contact the pharmacist.
5. For a new prescription being dispensed by mail to a patient, an attempt to reach the patient or the patient's agent must be made for a consultation on the prescription; however, if the patient or the patient's agent is not available at the time of dispensing, the pharmacy must supply written or electronic materials and a toll-free phone number for the patient or the patient's agent to contact the pharmacist.
6. This section does not apply to prescriptions for patients exempted in North Dakota Century Code section 43-15-31.2.
7. Failure to provide proper consultation under this section is considered unprofessional conduct by the pharmacy and pharmacist under subsection 9 of section 61-04-04-01 and is subject to disciplinary action.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-15-10(1)(12), 43-15-31.2, 43-15-34, 43-15-35

Law Implemented: NDCC 28-32-02, 43-15-10(1)(12), 43-15-31.2, 43-15-34, 43-15-35

CHAPTER 61-08-01

61-08-01-10. Counseling services.

Out-of-state pharmacies shall provide accessible telephone counseling service for patients' drug inquiries with a licensed pharmacist during regular working hours. Available telephone counseling service must be provided that is consistent with the standard of due care. The pharmacies' telephone number will be prominently identified and affixed on the prescription container label. [Guidelines for counseling services must be consistent with professional practice counseling guidelines set in chapter 61-04-13.](#)

History: Effective April 1, 1988; [amended effective July 1, 2017.](#)

General Authority: NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, [43-15-31.2,](#) 43-15-35, 43-15-36, 43-15-38

Law Implemented: NDCC 28-32-02, 43-15-10(7)(8)(9)(12)(14), 43-15-34, [43-15-31.2,](#) 43-15-35, 43-15-36, 43-15-38

TITLE 69
PUBLIC SERVICE COMMISSION

JULY 2017

CHAPTER 69-06-08

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, this exclusion does not apply.
 - e. Irrigated land.
 - f. Areas critical to the life stages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

- a. Areas less than:
 - (1) One and one-tenth times the height of the turbine from interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from any railroad right of way;
 - (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.

3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.

4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
 - a. The impact upon agriculture:

- (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.
- b. The impact upon the availability and adequacy of:
- (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
- c. The impact upon:
- (1) Local institutions.
 - (2) Noise-sensitive land uses.
 - (3) Light-sensitive land uses.
 - ~~(4)~~ Rural residences and businesses.
 - ~~(4)~~(5) Aquifers.
 - ~~(5)~~(6) Human health and safety.
 - ~~(6)~~(7) Animal health and safety.
 - ~~(7)~~(8) Plant life.
 - ~~(8)~~(9) Temporary and permanent housing.
 - ~~(9)~~(10) Temporary and permanent skilled and unskilled labor.
- d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.
- n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

**ARTICLE 69-09
PUBLIC UTILITY DIVISION**

Chapter	
69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Pipeline Safety
69-09-04	Uniform Sign Standards - Railroad
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration
69-09-08	Renewable Electricity and Recycled Energy Tracking System
69-09-09	Wind Turbine Facility Decommissioning

CHAPTER 69-09-02

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code.

The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~2012~~2017 edition of the National Electrical Safety Code which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003; July 1, 2008; April 1, 2013; July 1, 2017.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

CHAPTER 69-09-09
WIND ~~TURBINE~~FACILITY DECOMMISSIONING

Section

69-09-09-01	Definitions
69-09-09-02	Decommissioning Responsibility
69-09-09-03	<u>Abandonment and Useful Life - Certificate of Operation</u>
69-09-09-04	Decommissioning Period
69-09-09-05	Decommissioning Requirements
69-09-09-06	Decommissioning Plan
69-09-09-07	Existing Facilities
69-09-09-08	Financial Assurance
69-09-09-09	Failure to Decommission

69-09-09-01. Definitions.

1. "Capacity factor" means the ratio of the actual output generated by a facility for a period of time, to the output that could be produced at the nameplate generating capacity of that facility.
2. "Certificate of operation" means an affidavit executed by the owner certifying to the commission a facility's:
 - a. Nameplate generating capacity;
 - b. Annual capacity factor;
 - c. Annual megawatt hour output; and
 - d. Monthly megawatt hour output.
3. "Commercial wind energy conversion facility" means a wind energy conversion facility ~~of~~with one or more wind turbines that has a total nameplate generating capacity equal to or greater than five hundred kilowatts ~~in total nameplate generating capacity.~~
- ~~2.4.~~ "Commission" means the public service commission.
- ~~3.5.~~ ~~"Wind turbine" means a wind turbine of equal to or greater than five hundred kilowatts in total nameplate generating capacity.~~ "Construction" means any clearing of land, excavation, or other action that would affect the environment of the site of a facility, but does not include activities incident to preliminary engineering or environmental studies.
6. "Decommissioning plan" means a plan filed with the commission that includes:
 - a. The anticipated life of the facility;
 - b. A decommissioning cost estimate, excluding salvage value of the turbines and equipment;
 - c. A description of the method used for determining the decommissioning cost estimate;
 - d. The anticipated manner in which the project will be decommissioned;
 - e. A description of any expected effects on present and future natural resource development; and
 - f. A detailed plan of financial assurance sufficient to ensure decommissioning.

7. "Existing facility" means a facility for which a certificate of site compatibility has been issued prior to July 1, 2017.

8. "Facility" means a commercial wind energy conversion facility, including wind turbines, turbine towers, tower bases, blades, pad transformers, collector lines, substations, facility access roads, meteorology towers, and all areas disturbed by the construction, operation, maintenance, or decommissioning activities.

9. "Owner" means a person who holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-02. Decommissioning responsibility.

The owner ~~or operator of a commercial wind energy conversion facility~~ is responsible for decommissioning ~~that~~the facility and for all costs associated with decommissioning ~~that facility and associated facilities.~~

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-03. UsefulAbandonment and useful life - Certificate of operation.

~~—A commercial wind energy conversion facility or individual wind turbine is presumed to be at the end of its useful life if the facility or turbine generates no electricity for a continuing period of twenty-four months. The presumption may be rebutted by submitting to the commission for approval a plan outlining the steps and schedule for returning the commercial wind energy conversion facility or wind turbine to service.~~

1. After construction of a facility is complete, the owner annually shall file a certificate of operation with the commission for that facility by April first of each year.

2. If no energy is generated by one or more wind turbines for the time period specified in the certificate of operation, a written explanation for the nongenerating wind turbines must accompany the certificate of operation.

3. A facility is presumed to be at the end of its useful life if its annual capacity factor is less than ten percent for two consecutive years.

4. A facility is presumed to be abandoned if, after commencement of construction and prior to completion, a period of twenty-four consecutive months has passed with no significant construction.

5. A presumption under this section may be rebutted by filing a plan for commission approval outlining the steps and schedule for continuing construction or operation of the facility or wind turbine.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-04. Decommissioning period.

The ~~facility owner or operator~~ shall begin decommissioning ~~a commercial wind energy conversion facility or wind turbine~~ within ~~eight~~twelve months after ~~the time the facility~~abandonment or ~~turbine reaches~~ the end of its useful life, ~~as determined in section 69-09-09-03~~. Decommissioning must be completed within ~~eighteen~~twenty-four months after ~~the facility~~abandonment or ~~turbine reaches~~ the end of its useful life unless the commission approves a plan specifying the steps and schedules to return the facility to operation.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements.

Decommissioning ~~and site restoration~~ includes ~~dismantling~~:

1. Dismantling and removal of all towers, turbine generators, transformers, and overhead cables; ~~removal~~

2. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters]; ~~removal~~

3. Removal of foundations, buildings, and ancillary equipment to a depth of ~~three~~:

a. Three feet [91.44 centimeters] for facilities constructed before July 1, 2017; and ~~removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy conversion facility or wind turbine. The site must be restored and reclaimed to the same general topography that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine and with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance. Areas disturbed by the construction of the facility and decommissioning activities must be graded, topsoiled, and reseeded according to natural resource conservation service technical guide recommendations and other agency recommendations, unless the landowner requests in writing that the access roads or other land surface areas be retained.~~

b. Four feet [121.92 centimeters] for facilities constructed on or after July 1, 2017;

4. Site restoration and reclamation to the approximate original topography that existed prior to construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance; and

5. Grading and topsoil of areas disturbed by the facility, and reseeded according to natural resource conservation service recommendations, unless the commission approves an owner request signed by the applicable landowner, identifying the surface features the landowner prefers to remain in place, and the reason the landowner prefers those features to remain.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-06. Decommissioning plan.

~~—Prior to commencement of operation of a commercial wind energy conversion facility or wind turbine, the facility or turbine owner or operator shall file for commission review the estimated decommissioning cost per turbine, in current dollars at the time of filing, for the proposed facility or~~

~~turbine and a comprehensive decommissioning plan that describes any expected effect on present and future natural resource development and how the facility or turbine owner or operator plans to pay for decommissioning the facility or turbine as required by section 69-09-10-05 at the appropriate time. The commission may at any time require the owner or operator of a commercial wind energy conversion facility or wind turbine to file a report with the commission describing how the facility or turbine owner or operator is fulfilling this obligation.~~

1. Prior to the commencement of operation of a facility, the owner shall have an approved decommissioning plan.
2. The commission shall make a determination on the decommissioning plan no later than sixty days after the decommissioning plan is deemed complete by the commission.
3. A decommissioning cost estimate for a facility:
 - a. Must be made by a professional engineer licensed by the state of North Dakota and at the owner's expense;
 - b. May include a decommissioning cost estimate, including salvage value, in addition to the decommissioning cost estimate, excluding salvage value;
 - c. Must be updated and filed with the commission ten years after initial approval of the decommissioning plan and then continue to be updated and filed with the commission every five years until decommissioning is complete.
4. The commission, at any time, may require the owner to file an updated decommissioning plan.

History: Effective October 1, 2008; amended effective October 1, 2010; July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities.

~~Owners and operators of existing commercial wind energy conversion facilities shall file with the commission the information required in section 69-09-09-06 within one year after July 1, 2008.~~The owner of an existing facility shall provide financial assurance after the tenth year of operation sufficient to complete decommissioning.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance.

~~—After the tenth year of operation of a commercial wind energy conversion facility or wind turbine, the commission by order may require the owner or operator to secure a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning the commercial wind energy conversion facility or turbine. The commission may accept a corporate guarantee if the corporation has a tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liabilities of 1.2 or greater; or if it has an investment grade current rating for its most recent bond issuance of "Baa" or higher as issued by Moody's Investors Service "BBB" or higher as issued by Standard and Poor's Corporation, or an equivalent rating by any other nationally-recognized statistical rating organization, as defined and approved by the United States securities and exchange commission.~~

1. Prior to commencement of construction of a facility, the owner shall provide financial assurance equal to five percent of the estimated cost of construction of the facility that may be used to decommission the facility in the event it is abandoned prior to operation. Within sixty days of receipt of written notice from the owner that the facility is commercially operational, the commission shall return or release said financial assurance provided to the commission.
2. Prior to commencement of operation of a facility, the owner shall provide financial assurance that is acceptable to the commission and sufficient to ensure complete decommissioning.
3. Financial assurance may be in the form of a performance bond either as, or combination of, a surety bond, irrevocable letter of credit, self-guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning.
4. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of operation.
5. The commission may accept a self-guarantee or parent guarantee if:
 - a. The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a self-guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
 - b. The owner or parent guarantor has or is one of the following:
 - (1) A current rating in the "A" category or higher for its most recent bond issuance or issuer rating as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, which is acceptable to the commission. If an organization has different ratings among various rating organizations, the commission shall accept the higher of the ratings;
 - (2) A tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater; or
 - (3) An electric public utility as defined by subsection 2 of North Dakota Century Code section 49-03-01.5.
6. The total amount of an outstanding self-guarantee for decommissioning may not exceed twenty-five percent of the owner's tangible net worth in the United States.
7. The combined total amount of an outstanding self-guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner's and parent guarantor's combined tangible net worth in the United States.
8. If any financial assurance is modified, canceled, suspended, or revoked, the owner immediately shall notify the commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
9. The commission may require additional financial assurance upon a finding that the current financial assurance for a facility is not sufficient to ensure complete decommissioning.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-09. Failure to decommission.

If the ~~commercial wind energy conversion facility~~ owner ~~or operator~~ does not complete decommissioning, the commission may take ~~such action as may be necessary~~ to complete decommissioning, including ~~requiring~~action to require forfeiture of ~~the~~a bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a ~~commercial wind energy conversion facility or wind turbine~~, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the ~~commercial wind energy conversion~~ facility.

History: Effective October 1, 2008; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

TITLE 69.5
RACING COMMISSION, NORTH DAKOTA

JULY 2017

CHAPTER 69.5-01-07
CONDUCT OF RACES

Section

69.5-01-07-01	Horses Ineligible
69.5-01-07-02	Entries
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69.5-01-07-04	Closing of Entries
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69.5-01-07-08	Scratch - Declaring Out
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69.5-01-07-11	Racing Numbers
69.5-01-07-12	Valuation of Purse Money
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69.5-01-07-14	Purse Money Presumption
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69.5-01-07-16	Race Procedures
<u>69.5-01-07-16.1</u>	<u>Post to Finish</u>
69.5-01-07-17	Claiming Races
69.5-01-07-18	Medication

69.5-01-07-16.1. Post to finish.

1. The start.

- a. The starter shall assure each participant receives a fair start.
- b. If the stewards suspect a false start has occurred, the stewards shall post the inquiry sign and may disqualify the horse, declare it a nonstarter, or take no action.
- c. If, when the starter dispatches the field, any door at the front of the starting gate stalls does not open properly due to a mechanical failure or malfunction or if any action by any starting personnel directly causes a horse to receive an unfair start, the stewards may declare the horse a nonstarter.
- d. Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse must be declared a nonstarter by the stewards.

e. If an accident or malfunction of the starting gate, or other unforeseeable event compromises the fairness of the race or the safety of race participants, the stewards may declare individual horses to be nonstarters, exclude individual horses from all parimutuel pools or declare a "no race".

f. If a race is declared a "no race" the purse must be distributed evenly to all participants or the funds must be returned to their source. If it is determined funds must be returned:

(1) All funds provided by the commission must be returned to the commission except when an association returns the funds to that association's purse pool and uses the funds to fund subsequent races.

(2) Nomination, entry fees, or similar payments by horsemen for eligibility in the race must be returned to the horsemen.

2. Disqualification.

a. If the stewards determine a horse is disqualified for interference, the stewards may place the offending horse behind such horses as in the stewards' judgment it interfered with, or the stewards may place it last.

b. If a horse is disqualified for a foul, any horse in the same race owned or trained by the same interests, whether coupled or uncoupled, also may be disqualified.

c. When a horse is disqualified for interference in a time trial race, for the purposes of qualifying only, the horse must receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and is eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

d. Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person authorized to handle or attend to a horse is prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify the horse.

e. The stewards may determine that a horse must be unplaced for the purpose of purse distribution and time trial qualification.

3. Multiple disqualifications. If the stewards determine there is more than one incident of interference in a race for which disqualification is warranted, the stewards shall deal with the incidents in the order in which the incident occurs during the race from start to finish; except in the case in which the same horses are involved in multiple incidents. Once a horse has been disqualified, it should remain placed behind the horse with which it interfered. The stewards shall make a conscious effort to place and maintain as placed, every and all horses placed behind others for interference.

4. Use of riding crop.

a. Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting the jockey's best efforts to win.

b. In all races in which a jockey rides without a riding crop, an announcement of such fact must be made over the public address system.

c. No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, may be

possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

d. The riding crop only may be used for safety, correction, and encouragement.

e. All riders should comply with the following when using a riding crop:

(1) Showing the horse the riding crop and giving it time to respond before hitting it;

(2) Having used the riding crop, giving the horse a chance to respond before using it again; and

(3) Using the riding crop in rhythm with the horse's stride.

f. Prohibited use of the riding crop includes striking a horse:

(1) On the head, flanks, or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;

(2) During the post parade or after the finish of the race except when necessary to control the horse;

(3) Excessively or brutally causing welts or breaks in the skin;

(4) When the horse is clearly out of the race or has obtained its maximum placing;

(5) Persistently even though the horse is showing no response under the riding crop; or

(6) Striking another rider or horse.

g. After the race, horses are subject to inspection by a racing or official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings must be reported to the stewards.

h. The giving of instructions by any licensee, which if obeyed, would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.

5. Horse leaving the racecourse. If a horse leaves the racecourse during a race, the horse is disqualified.

6. Order of finish.

a. The stewards shall decide the official order of finish. The decision may be made with the aid of the photo finish system, and in the absence of the photo finish film record, the video replay. The photo finish and video replay are only aids in the stewards' decision. The decision of the stewards is final in all cases.

b. The nose of the horse determines the placement of the horse in relationship to other horses in the race.

7. Time trials. In absence of specific conditions for a particular race that set forth criteria to address the situations that may arise from the running of time trials to determine the eligible horses to participate in finals, these rules apply:

a. Except in cases in which the starting gate or racetrack physically restricts the number of horses starting, each time trial must consist of no more than ten horses.

- b. The time trials must be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten fastest times qualify to participate in the finals. If the time trials are conducted on two days, the horses with the five fastest times on the first day and the horses with the five fastest times on the second day qualify to participate in the finals. When time trials are conducted on two days, the racing secretary shall make a best effort to split owners with more than one entry into separate days or time trials, or both.
- c. If the association's starting gate has fewer than ten stalls or the racetrack safely accommodates fewer than ten horses, the maximum number of qualifiers must correspond to the maximum number of starting gate post positions or maximum number of horses the track can safely accommodate.
- d. Except in races around the turn, if only eleven or twelve horses are entered to run in time trials from a gate with twelve or more stalls, the association may choose to run finals only. If eleven or twelve horses participate in the finals, only the first ten finishers receive purse money.
- e. In the time trials, horses must qualify on the basis of time and order of finish. The times of the horses in the time trial is determined to the limit of the timer. The only exception is when two or more horses have the same time in the same trial heat. In that case, the order of finish also determines the preference in qualifying for the finals. If two or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position, a draw by public lot must be conducted as directed by the stewards. Qualifying times in separate trials may not be determined beyond the limit of the timer by comparing or enlarging photo-finish images, or both.
- f. Except in the case of a disqualification, under no circumstances may a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial.
- g. If a horse is disqualified for interference during the running of a time trial, the horse must receive the time of the horse it is immediately placed behind plus one hundredth of a second, or the maximum accuracy of the electronic timing device. No adjustments may be made in the times recorded in the time trials to account for headwind, tailwind, offtrack, etc. If a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse must be given no time plus and that horse should not be eligible to run in the finals.
- h. If a malfunction occurs with the electronic timer on any time trial, finalists from that time trial must be determined by official hand timing operated by two official and disinterested persons. The average of the two hand times must be utilized for the winning time, unless one of the hand times is clearly incorrect. In such cases, the more accurate hand time must be utilized for the winning time; other horses must be given times according to the order and margins of finish with the aid of the photo finish, if available.
- i. When there is a malfunction of the timer during some time trials, but the timer operates correctly in other time trials, the accurate electronic times may not be discarded, nor may the average of hand times be used for all time trials.
- j. If the accuracy of the electronic timer or the average of the hand times, or both, are questioned, the video of a time trial may be used by the stewards to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. When the timer malfunctions and there are no hand times, the stewards may select qualifiers based on the video.

- k. If there is a malfunction of the starting gate, and one or more stall doors do not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses with malfunctioning stall doors nonstarters or may allow any horse whose stall door opened late, but still ran a time fast enough to qualify to be declared a starter for qualifying purposes. If a horse breaks through the stall door, or the stall door opens prior to the exact moment the starter purposely dispatches the field, the horse may be declared a nonstarter and the stewards may direct that all entry fees be refunded. If one or more, but not all stall doors, open at the exact moment the starter purposely dispatches the field, these horses should be considered starters for qualifying purposes, and placed according to their electronic time. If the electronic timer malfunctions in this instance, the average of the hand times, or if not available, the video may be utilized for horses declared starters.
- l. If a horse is scratched from the time trials, the horse's owner is not be eligible for a refund of the fees paid and may not be allowed to enter the final. If a horse that qualified for the final is unable to enter due to racing soundness, or scratched for any reason other than a positive drug test or a rule violation, the horse is deemed to have earned and the owner will receive, last place money. If more than one horse is scratched, those purse monies may be added together and divided equally among those owners.
- m. If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the nonqualifier with the next fastest time replaces the disqualified horse. If a qualifier is disqualified after entry for a final or consolation for any reason other than racing unsoundness, illness, or death, if necessary, the purse must be redistributed among the remaining qualifiers.

History: Effective July 1, 2017.

General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10

Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

TITLE 92
WORKFORCE SAFETY AND INSURANCE

JULY 2017

**CHAPTER 92-01-02
RULES OF PROCEDURE - NORTH DAKOTA WORKERS' COMPENSATION ACT**

Section

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92-01-02-06	Evidence [Repealed]
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92-01-02-11. Attorneys.

Any party has a right to be represented by an attorney at any stage in the proceedings regarding a claim. An attorney who represents an injured worker in a proceeding regarding a claim shall file a notice of legal representation prior to or together with the attorney's first communication with the organization. [The notice of legal representation remains in effect for five years from the date it is signed by the injured worker or until revoked by the injured worker, whichever occurs first.](#)

History: Amended effective June 1, 1990; April 1, 1997; April 1, 2008; [July 1, 2017.](#)

General Authority: NDCC 65-02-08, 65-10-03

Law Implemented: NDCC 65-02-08, 65-10-03

92-01-02-12. Mileage and per diem for travel to and from medical treatment.

Workforce safety and insurance recognizes payment for travel and lodging to and from medical treatment as a reasonable and necessary medical expense. Lodging expenses will be reimbursed if they are necessary and reasonable. These expenses will be paid according to North Dakota Century Code section 65-05-28, ~~except that reimbursement for out-of-state lodging may not exceed one hundred twenty-five percent of the allowance for in-state lodging.~~ The number of miles actually traveled is rebuttably presumed to be the least number of miles listed by MapQuest at www.mapquest.com between the start and end points of travel.

History: Effective August 1, 1988; amended effective April 1, 1997; July 1, 2010; April 1, 2012; April 1, 2014; July 1, 2017.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08, 65-05-28

92-01-02-24. Rehabilitation services.

1. When an employment opportunity suited to an employee's education, experience, and marketable skills is identified within thirty-five miles [56.33 kilometers] from the employee's home, the appropriate priority option must be identified as return to related occupation in the local job pool under subdivision e of subsection 4 of North Dakota Century Code section 65-05.1-01, and relocation expense under subsection 3 of North Dakota Century Code section 65-05.1-06.1 may not be paid.
2. The organization may award services to move an employee's household where the employee has actually located work under subdivision e of subsection 2 of North Dakota Century Code section 65-05.1-06.1 or under subsection 3 of North Dakota Century Code section 65-05.1-06.1 only when the employee identifies the job the employee will perform, the employee's employer, and the employee's destination. A relocation award must be the actual cost of moving the household to the location where work has been obtained. A minimum of two bids detailing the costs of relocation must be submitted to the organization for approval prior to incurring the cost. The organization shall pay per diem expenses, as set forth under subsection 2 of North Dakota Century Code section 65-05-28, for the employee only. Reimbursement for mileage expenses may not be paid for more than one motor vehicle.
3. When the rehabilitation award is for retraining, the organization shall pay the actual cost of books, tuition, and school supplies required by the school. The school must provide documentation of the costs necessary for completion of the program in which the employee is enrolled. Reimbursable school costs may not exceed those charged to other students participating in the same program. The award for school supplies may not exceed twenty-five dollars per quarter or thirty dollars per semester unless the employee obtains prior approval of the organization by showing that the expenses are reasonable and necessary. A rehabilitation award for retraining may include tutoring assistance to employees who require tutoring to maintain a passing grade. Payment of tutoring services will be authorized when these services are not available as part of the training program. The award for tutoring services may not exceed the usual and customary rate established by the school. Expenses such as association dues or subscriptions may be reimbursed only if that expense is a course requirement.
4. An award for retraining which includes an additional rehabilitation allowance as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 may continue only while the employee is actually enrolled or participating in the training program.

5. An award of a specified number of weeks of training means training must be completed during the specified period of weeks, and rehabilitation benefits may be paid only for the specified number of weeks of training.
6. The organization may reimburse an employee's travel and personal expenses for attendance at an adult learning center or skill enhancement program at the request of the employee and upon the approval of the organization. All claims for reimbursement must be supported by the original vendor receipt, when appropriate, and must be submitted within one year of the date the expense was incurred. The organization shall reimburse these expenses at the rates in effect on the date of travel or the date the expense was incurred at which state employees are paid per diem and mileage, or reimburse the actual cost of meals and lodging plus mileage, whichever is less. The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. The number of miles actually traveled is rebuttably presumed to be the least number of miles listed by MapQuest at www.mapquest.com between the start and end points of travel. The organization may not reimburse mileage or travel expenses when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage in a calendar month equals or exceeds two hundred miles [321.87 kilometers].
7. The organization may pay for retraining equipment required by an institution of higher education or an institution of technical education on behalf of a student attending that institution. The organization will award retraining candidates one thousand two hundred dollars for the purchase of computer, warranty, software, maintenance, and internet access. Securing and maintaining these items are the injured employee's responsibility. Failure to maintain or secure these items does not constitute good cause for noncompliance with vocational rehabilitation. Improper maintenance of the equipment does not constitute good cause for noncompliance with vocational rehabilitation.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; February 1, 1998; May 1, 2002; July 1, 2006; July 1, 2010; April 1, 2012; April 1, 2016; [July 1, 2017](#).

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05.1

92-01-02-25. Permanent impairment evaluations and disputes.

1. Definitions:
 - a. Amputations and loss as used in subsection 11 of North Dakota Century Code section 65-05-12.2.

"Amputation of a thumb" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the second or distal phalanx of the thumb" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of the first finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the first finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the first finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the second finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the second finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the second finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the third finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the third finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the fourth finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the fourth finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the leg at the hip" means disarticulation at or distal to the hip joint (separation of the head of the femur from the acetabulum).

"Amputation of the leg at or above the knee" means disarticulation at or proximal to the knee joint (separation of the femur from the tibia).

"Amputation of the leg at or above the ankle" means disarticulation at or proximal to the ankle joint (separation of the tibia from the talus).

"Amputation of a great toe" means disarticulation at the metatarsal phalangeal joint.

"Amputation of the second or distal phalanx of the great toe" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of any other toe" means disarticulation at the metatarsal phalangeal joint.

"Loss of an eye" means enucleation of the eye.

- b. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.
- c. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the physical evaluation that affects the amount of the award. The dispute to be reviewed must clearly summarize the underlying medical condition. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, sixth edition. It does not include disputes arising from an impairment percentage rating or an impairment opinion given by a doctor when the doctor is not trained in the American medical association guides to the evaluation of permanent impairment, sixth edition, and when the doctor's impairment percentage rating or impairment opinion do not meet the requirements of subsection 5 of North Dakota Century Code section 65-05-12.2.
- d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely result in a monetary impairment award.

- e. "Treating doctor" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license who has physically examined or provided direct care or treatment to the injured employee.
2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, sixth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work-related and non-work-related injuries or conditions.
3. The organization shall establish a list of medical specialists who have the training and experience necessary to conduct an evaluation of permanent impairment and apply the American medical association guides to the evaluation of permanent impairment, sixth edition. When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a doctor from the list. The organization may not schedule a permanent impairment evaluation with the employee's treating doctor. The organization and employee may agree to an evaluation by a doctor not on the current list. In the event of a medical dispute, the organization will identify qualified specialists and submit all objective medical documentation regarding the dispute to specialists who have the knowledge, training, and experience in the application of the American medical association guides to the evaluation of permanent impairment, sixth edition. To the extent more than one doctor is identified, the organization will consult with the employee before appointment of the doctor.
4. Upon receiving a permanent impairment rating report from the doctor, the organization shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.
 - a. Pain impairment ratings. A permanent impairment award may not be made upon a rating solely under chapter 3 of the sixth edition.
 - b. Mental and behavioral disorder impairment ratings. Any evaluating doctor determining permanent mental or behavioral disorder impairment per chapter 14 of the sixth edition shall include a written summary of the mental evaluation in the evaluation report.
 - c. In chapters that include assessment of the functional history as one of the nonkey factors to adjust the final impairment rating within a class by using a self-report tool, the examining doctor is to score the self-report tool and assess results for consistency and credibility before adjusting the impairment rating higher or lower than the default value. The evaluating doctor must provide rationale for deciding that functional test results are clinically consistent and credible.
 - d. A functional history grade modifier may be applied only to the single, highest diagnosis-based impairment.
 - e. All permanent impairment reports must include an apportionment if the impairment is caused by both work and non-work injuries or conditions.
5. Errata sheets and guides updates. Any updates, additions, or revisions by the editors of the sixth edition of the guides to the evaluation of permanent impairment as of April 1, 2012, are adopted as an update, addition, or revision by the organization.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2009; July 1, 2010; April 1, 2012; [July 1, 2017](#).

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-12.2

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.
2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.
3. The organization will not authorize or pay for the following treatment:
 - a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization. Massage therapy must be provided by a licensed physical therapist, licensed occupational therapist, or licensed chiropractor; ~~or licensed massage therapist~~.
 - b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).
 - c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor and dispensed and processed according to the current pharmacy transaction standard. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.
 - d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, hot packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.
 - e. Vertebral axial decompression therapy (Vax-D treatment).
 - f. Intradiscal electrothermal annuloplasty (IDET).
 - g. Prolotherapy (sclerotherapy).
 - h. Surface electromyography (surface EMG).
 - i. Athletic trainer services that are provided to a claimant via an agreement, or a contract of employment between a trainer and a claimant's employer, or an entity closely associated with the employer.
 - j. Spine strengthening program (e.g. MedX or SpineX or other substantially equivalent program).

k. Electrodiagnostic studies performed by electromyographers who are not certified or eligible for certification by the American board of electrodiagnostic medicine, American board of physical medicine and rehabilitation, or the American board of neurology and psychiatry's certification in the specialty of clinical neurophysiology. Nerve conduction study reports must include either laboratory reference values or literature-documented normal values in addition to the test values to be eligible for payment.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016; July 1, 2017.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-29.3. Motor vehicle purchase ~~or~~ and modification.

1. An injured worker must obtain aan attending doctor's order of medical necessity supported by objective medical findings before the purchase of a specially equipped motor vehicle or modification of a vehicle may be approved. The attending doctor's order must contain the following:

a. Patient's name;

b. Date of patient's face-to-face examination;

c. Pertinent diagnosis or conditions that relate to the need for device or modification;

d. Description of what is ordered;

e. Length of need;

f. Attending doctor's signature; and

g. Date of attending doctor's signature.

2. The organization may require assessments to determine the functional levels of an injured worker who is being considered for a specially equipped motor vehicle or vehicle modification and to determine what modifications are medically necessary.

3. If an existing vehicle cannot be repaired or modified, the organization, in its sole discretion, may approve the purchase of a specially equipped motor vehicle.

4. A minimum of two itemized cost quotes may be requested by the organization. The organization may decrease or add the number of cost quotes needed accordingly.

5. Actual vehicle or modification purchase may not occur until the organization reviews the request and issues recommendations or decisions as to whether eligible for the benefit.

6. Cost quotes must be itemized.

7. Any available vehicle rebates or tax exemptions shall be applied back to the lifetime benefit amount as provided in subsection 5 of North Dakota Century Code section 65-05-07.

8. Any appeal of a decision under this section shall be adjudicated pursuant to North Dakota Century Code section 65-02-20.

History: Effective April 1, 2009; amended effective April 1, 2012; April 1, 2014; July 1, 2017.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-07(5)(b)

92-01-02-29.4. Home modifications.

1. An injured worker must obtain an attending doctor's order of medical necessity supported by objective medical findings before the payment for home modifications can be approved. The attending doctor's orders must contain the following:

a. Patient's name;

b. Date of patient's face-to-face examination;

c. Pertinent diagnosis or conditions that relate to the need for device or modification;

d. Description of what is ordered;

e. Length of need;

f. Attending doctor's signature; and

g. Date of attending doctor's signature.

2. The organization may require assessments to determine the functional levels of an injured worker who is being considered for home modifications and to determine what modifications are medically necessary.

3. A minimum of two itemized cost quotes may be requested by the organization. The organization may decrease or add the number of cost quotes needed accordingly.

4. Actual construction or modification cannot occur until the organization reviews the request and issues recommendations or decisions as to eligibility for the benefit.

5. Cost quotes must be itemized.

6. Payment by the organization may not occur until the modification work is completed, or at least, completed in documented phases or at the discretion of the organization.

7. The organization may request that the contractor for proposed home modification be in good standing (example: licensed in the state, bonded, etc.)

8. Real estate modifications to driveways, sidewalks, or passageways may only be approved if evidence supports that those routes are needed to provide safe passageway for the injured worker.

9. Any appeal of a decision under this section shall be adjudicated pursuant to North Dakota Century Code section 65-02-20.

10. Modifications will only be considered upon receipt of documentation establishing injured employee's ownership of the residence to be permanently modified.

11. Modifications within new construction will be considered upon receipt of the original floor plan/specifications and cost estimate, as well as the modified floor plan and cost estimate.

History: Effective April 1, 2012; amended effective April 1, 2014; April 1, 2016; July 1, 2017.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-07

92-01-02-29.5. Power mobility devices.

1. An injured employee shall obtain an attending doctor's order of medical necessity supported by objective medical findings before the purchase of a power mobility device may be approved by the organization. The attending doctor's order must contain the following:
 - a. Patient's name;
 - b. Date of patient's face-to-face examination;
 - c. Pertinent diagnosis or conditions that relate to the need for device or modification;
 - d. Description of what is ordered;
 - e. Length of need;
 - f. Attending doctor's signature; and
 - g. Date of attending doctor's signature.
2. There must be clear medical documentation of functional limits of standing and walking with an assistive device. Documentation must support reasons why a cane, walker, or manual wheelchair cannot be used to complete activities of daily living.
3. An attending doctor must make a referral for a mobility assessment and the assessment must be performed by a licensed or certified occupational therapist or physical therapist with specific training and experience in rehabilitation mobility or wheelchair evaluations. The assessment must be completed prior to the approval of a power mobility device.
4. When the power mobility device is primarily intended for outdoor use or recreational purposes, the device is not medically necessary.
5. Upgrades to a power mobility device are not considered medically necessary if the upgrade is primarily intended for luxury, outdoor, or recreational purposes. Specific items such as power tilt or recline seating will only be approved if the injured employee is at risk of additional medical complications, has issues with transfer, or an upgrade will help manage the injured employee's tone and spasticity.
6. An injured employee who has been approved for a power mobility device must independently qualify for a motor vehicle purchase or home modification as provided in subsection 5 of North Dakota Century Code section 65-05-07, section 92-01-02-29.3, and section 92-01-02-29.4.
7. If an injured employee does not sustain a catastrophic injury or if exceptional circumstances do not exist as provided in subsection 5 of North Dakota Century Code section 65-05-07, but the injured employee is approved for a power mobility device, the organization, in its sole discretion, may approve a vehicle modification or adaptation for the injured employee, but may not approve a vehicle purchase.
8. All initial and replacement requests for power mobility devices must meet the criteria in this section.
9. An appeal of a decision made by the organization under this section must be adjudicated pursuant to North Dakota Century Code section 65-02-20.

History: Effective July 1, 2017.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-07

92-01-02-31. Who may be reimbursed.

1. Only treatment that falls within the scope and field of the treating medical service provider's license to practice is reimbursable.
2. Paraprofessionals who are not independently licensed must practice under the direct supervision of a licensed medical service provider whose scope of practice and specialty training includes the service provided by the paraprofessional, in order to be reimbursed.
3. Health care providers may be refused reimbursement to treat cases under the jurisdiction of the organization.
4. Reasons for holding a medical service provider ineligible for reimbursement include one or more of the following:
 - a. Failure, neglect, or refusal to submit complete, adequate, and detailed reports.
 - b. Failure, neglect, or refusal to respond to requests by the organization for additional reports.
 - c. Failure, neglect, or refusal to respond to requests by the organization for drug testing.
 - d. Failure, neglect, or refusal to observe and comply with the organization's orders and medical service rules, including cooperation with the organization's managed care vendors.
 - ~~d.e.~~ Failure to notify the organization immediately and prior to burial in any death if the cause of death is not definitely known or if there is question of whether death resulted from a compensable injury.
 - ~~e.f.~~ Failure to recognize emotional and social factors impeding recovery of claimants.
 - ~~f.g.~~ Unreasonable refusal to comply with the recommendations of board-certified or qualified specialists who have examined the claimant.
 - ~~g.h.~~ Submission of false or misleading reports to the organization.
 - ~~h.i.~~ Collusion with other persons in submission of false or misleading information to the organization.
 - ~~i.j.~~ Pattern of submission of inaccurate or misleading bills.
 - ~~j.k.~~ Pattern of submission of false or erroneous diagnosis.
 - ~~k.l.~~ Billing the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or billing the claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.
 - ~~l.m.~~ Failure to include physical conditioning in the treatment plan. The medical service provider should determine the claimant's activity level, ascertain barriers specific to the claimant, and provide information on the role of physical activity in injury management.
 - ~~m.n.~~ Failure to include the injured worker's functional abilities in addressing return-to-work options during the recovery phase.

- ~~n.o.~~ Treatment that is controversial, experimental, or investigative; which is contraindicated or hazardous; which is unreasonable or inappropriate for the work injury; or which yields unsatisfactory results.
- ~~e.p.~~ Certifying disability in excess of the actual medical limitations of the claimant.
- ~~p.q.~~ Conviction in any court of any offense involving moral turpitude, in which case the record of the conviction is conclusive evidence.
- ~~q.r.~~ The excessive use, or excessive or inappropriate prescription for use, of narcotic, addictive, habituating, or dependency inducing drugs.
- ~~r.s.~~ Declaration of mental incompetence by a court of competent jurisdiction.
- ~~s.t.~~ Disciplinary action by a licensing board.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; July 1, 2010; July 1, 2017.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-32.1. Physical therapy assistants, certified occupational therapy assistants, and certified athletic trainers.

Physical therapist assistants, certified occupational therapist assistants, and certified athletic trainers may be reimbursed when providing treatment under the direction and general supervision of the physical therapist or occupational therapist. Physical and occupational therapists are responsible for the assistants under their direction and supervision. Examination, evaluation, diagnosis, prognosis, and outcomes are the sole responsibility of the physical therapist and occupational therapist. Physical therapist assistants, certified occupational therapist assistants, and certified athletic trainers are not allowed to perform functional capacity evaluations.

History: Effective July 1, 2017.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-33. Utilization review and quality assurance.

The organization has instituted a program of utilization review and quality assurance to monitor and control the use of health care services.

1. Prior authorization for services must be obtained from the organization or its managed care vendor at least ~~twenty-four~~seventy-two hours or ~~the next~~three business ~~day~~days in advance of providing certain medical treatment, equipment, or supplies. Medical services requiring prior authorization or preservice review are outlined in section 92-01-02-34. Emergency medical services may be provided without prior authorization, but notification is required within twenty-four hours of, or by the end of the next business day following, initiation of emergency treatment. Reimbursement may be withheld, or recovery of prior payments made, if utilization review does not confirm the medical necessity of emergency medical services.
2. Documentation of the need for and efficacy of continued medical care by the medical service provider is required at the direction or request of the organization or the managed care vendor while a claim is open.
3. The organization may require second opinion consultations prior to the authorization of reimbursement for surgery and for conservative care which extends past sixty days following the initial visit.

4. The organization may require preoperative psychosocial screens and psychological evaluations prior to the authorization of reimbursement for surgery. The organization may select the evaluators who will perform the screens and evaluations.
5. The organization may use the Official Disability Guidelines, the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, Guide to Physical Therapy Practice, The Medical Disability Advisor, Diagnosis and Treatment for Physicians and Therapists Upper Extremity Rehabilitation, Treatment Guidelines of the American Society of Hand Therapists, or any other treatment and disability guidelines or standards it deems appropriate to administer claims.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; July 1, 2006; April 1, 2012; [July 1, 2017](#).

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.
2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.
3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.
 - a. Durable medical equipment.
 - (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.
 - (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the organization will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the organization with a copy of their original invoice showing actual cost of the item upon request of the organization. The organization will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.

- (3) ~~If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.~~
- ~~(4)~~ (4) Equipment costing less than five hundred dollars does not require prior authorization. ~~This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes tens units.~~ except for the following: adult undergarments, ambulatory aids (including roller aids and scooters, walkers and walker accessories and attachments, wheelchairs and wheelchair accessories), catheters, commodes and bath and toilet aids (including chairs and railings), continuous passive motion devices (CPM), CPAP units, electromedical devices (including combination units [All-Stim], neuromuscular stimulators, and TENS units), eyewear (including frames, lenses, contact lenses, anti-reflective coating, polarization, progressive lenses, and scratch resistant or tinting coating), hearing aids and hearing aid batteries and filters, home traction units, nebulizers, orthotic footwear (including inserts [customized or molded], shoes or boots, and miscellaneous customized shoe additions), paraffin bath units, prosthetics, and wound VAC dressings.
- (5)(4) An injured worker must obtain a doctor's order of medical necessity before the purchase of a mobility assistance device.
- (6)(5) The organization may require assessments to determine the functional levels of an injured worker who is being considered for a mobility assistance device.
- b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.
- c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.
- d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits ~~that fall within CPT codes 99241 through 99275, inclusive;~~ new and established evaluation and management visits ~~that fall within CPT codes 99201 through 99215, inclusive;~~ individual psychotherapy visits ~~that fall within CPT codes 90804 through 90809, inclusive;~~ and pharmacologic management visits ~~that fall within CPT code 90862.~~ As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule

amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.

4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.
5. Medical service providers shall request preservice review from the utilization review department for:
 - a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures.
 - b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least ~~twenty-four~~^{seventy-two} hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the organization's choice. The organization shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the organization shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the organization may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the organization believes the proposed surgery is excessive, inappropriate, or ineffective and the organization cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.
 - c. Magnetic resonance imaging, a myelogram, discogram, bonescan, arthrogram, or computed axial tomography. Tomograms are subject to preservice review if requested in conjunction with a myelogram, discogram, bonescan, arthrogram, computed axial tomography scan, or magnetic resonance imaging. Computed axial tomography completed within thirty days from the date of injury may be performed without prior authorization. The organization may waive preservice review requirements for procedures listed in this subdivision when requested by a doctor who is performing an independent medical examination or permanent partial impairment evaluation at the request of the organization.
 - d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond sixty days after first prescribed, whichever occurs first, or physical therapy and occupational therapy treatment after an inpatient surgery, outpatient surgery, or ambulatory surgery beyond the first ten treatments or beyond sixty days after therapy services are originally prescribed, whichever occurs first. Postoperative physical therapy and occupational therapy may not be started beyond ninety days after surgery date. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers. Modalities for outpatient physical therapy services and outpatient occupational therapy services are limited to two per visit during the sixty-day or ten-treatment ranges

set out in this subsection. The number of units performed and billed per visit may not exceed four unless otherwise approved.

- e. ~~Electrodiagnostic studies may only be performed by electromyographers who are certified or eligible for certification by the American board of electrodiagnostic medicine, American board of physical medicine and rehabilitation, or the American board of neurology and psychiatry's certification in the specialty of clinical neurophysiology. Nerve conduction study reports must include either laboratory reference values or literature-documented normal values in addition to the test values. All nonemergent air ambulance services. When the attending doctor or consulting doctor believes transfer to another treatment facility is needed to treat a compensable injury, the attending doctor or the consulting doctor or the transferring treatment facility, with the approval of the attending doctor, shall give the utilization review department actual notice prior to the proposed transfer to the receiving treatment facility. Notice must give the medical information that substantiates the need for transfer via air ambulance service, the name of the treatment facility where transfer will occur, air service provider and estimated cost. The organization shall review the cost effectiveness and alternatives and provide notice to the requesting doctor or treatment facility within twenty-four hours, or by the end of the next business day.~~
- f. Thermography.
- g. Intra-articular injection of hyaluronic acid.
- h. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the organization may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.
- i. Facet joint injections.
- j. Sacroiliac joint injections.
- k. Facet nerve blocks.
- l. Epidural steroid injections.
- m. Nerve root blocks.
- n. Peripheral nerve blocks.
- o. Botox injections.
- p. Stellate ganglion blocks.
- q. Cryoablation.
- r. Radio frequency lesioning.
- s. Facet rhizotomy.
- t. Implantation of stimulators and pumps.

~~u. Massage therapy. No more than eighteen treatments of thirty-minute duration may be paid for the life of the claim. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care, to meet the needs of injured workers and providers.~~

~~v. Acupuncture therapy. No more than ~~twelve~~^{eighteen} treatments may be paid for the life of the claim. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.~~

~~w-v. Speech therapy if more than thirty visits per year are required.~~

w. The organization shall review all opioid therapies for medical necessity following the conclusion of a chronic opioid therapy. For injured employees whose chronic opioid therapies have been discontinued for noncompliance with North Dakota Century Code section 65-05-39, any subsequent opioid therapies may not exceed ninety days.

6. Chiropractic providers shall request preservice review from the organization's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The organization may waive this subsection in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers. Modalities for chiropractic services are limited to two per visit during the ninety-day or twelve-treatment ranges set out in this subsection.
7. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.
8. The organization or managed care vendor must respond to the medical service provider within three business days of receiving the necessary information to complete a review and make a recommendation on the service. Within the time for review, the organization or managed care vendor must recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.
9. The organization may conduct retrospective reviews of medical services and subsequently reimburse medical providers only:
 - a. If preservice review or prior authorization of a medical service is requested by a provider and a claimant's claim status in the adjudication process is pending or closed; or
 - b. If preservice review or prior authorization of a medical service is not requested by a provider and the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not know, that the condition was, or likely would be, covered under workers' compensation.

All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the organization or the managed care vendor, the medical information requested in relation to the reviewed service.

10. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.
11. The organization must respond to the medical service provider within thirty days of receiving a retrospective review request.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016; [July 1, 2017](#).

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-45.1. Provider responsibilities and billings.

1. A provider may not submit a charge for a service which exceeds the amount the provider charges for the same service in cases unrelated to workers' compensation injuries.
2. All bills must be fully itemized, including ICD codes, and services must be identified by code numbers found in the fee schedules or as provided in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as provided in the fee schedules or in these rules. All bills must be submitted to the organization within one year of the date of service or within one year of the date the organization accepts liability for the work injury or condition. Before the date on which centers for medicare and medicaid services implements ICD-10-CM, all bills must be coded with ICD-9-CM codes. On and after the date on which centers for medicare and medicaid services implements ICD-10-CM, all bills must be coded with ICD-10-CM codes.
3. All medical service providers shall submit bills referring to one claim only for medical services on current form UB 04 or form CMS 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms and pharmacy billings which must be submitted electronically to the organization's pharmacy managed care vendor using the current pharmacy transaction standard. Bills and reports must include:
 - a. The claimant's full name and address;
 - b. The claimant's claim number and social security number;
 - c. Date and nature of injury;
 - d. Before the date on which centers for medicare and medicaid services implements ICD-10-CM, area of body treated, including ICD-9-CM code identifying right or left, as appropriate. On and after the date on which centers for medicare and medicaid services implements ICD-10-CM, area of body treated, including ICD-10-CM code identifying right or left, as appropriate;
 - e. Date of service;
 - f. Name and address of facility where the service was rendered;
 - g. Name of medical service provider providing the service;
 - h. Physician's or supplier's billing name, address, zip code, telephone number; physician's national provider identifier (NPI); physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; or advanced practice registered nurse's NPI or North Dakota state license number;
 - i. Referring or ordering physician's NPI;
 - j. Type of service;
 - k. Appropriate procedure code or hospital revenue code;
 - l. Description of service;

- m. Charge for each service;
 - n. Units of service;
 - o. If dental, tooth numbers;
 - p. Total bill charge;
 - q. Name of medical service provider providing service along with the provider's tax identification number, provider's national provider identifier (NPI); and
 - r. Date of bills.
4. All records submitted by providers, including notes, except those provided by an emergency room physician and those on forms provided by the organization, must be typed to ensure that they are legible and reproducible. Copies of office or progress notes are required for all followup visits. Office notes are not acceptable in lieu of requested narrative reports. Communications may not refer to more than one claim. Addendums and late entries to notes or reports must be signed and must include the date they were created. Addendums or late entries to notes or reports created more than sixty calendar days after the date of service may be accepted at the organization's sole discretion.
5. Providers shall submit with each bill a copy of medical records or reports which substantiate the nature and necessity of a service being billed and its relationship to the work injury, including the level, type, and extent of the service provided to claimants. Documentation required includes:
- a. Laboratory and pathology reports;
 - b. X-ray findings;
 - c. Operative reports;
 - d. Office notes, physical therapy, and occupational therapy progress notes;
 - e. Consultation reports;
 - f. History, physical examination, and discharge summaries;
 - g. Special diagnostic study reports; and
 - h. Special or other requested narrative reports.
6. When a provider submits a bill to the organization for medical services, the provider shall submit a copy of the bill to the claimant to whom the services were provided. The copy must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the claimant.
7. If the provider does not submit records with a bill, and still does not provide those records upon request of the organization, the charges for which records were not supplied may not be paid by the organization, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.
8. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment, equipment, or products unless a claimant desires to receive them and

has accepted responsibility for payment, or unless the payment for the treatment was denied because:

- a. The claimant sought treatment from that provider for conditions not related to the compensable injury or illness.
 - b. The claimant sought treatment from that provider which was not prescribed by the claimant's attending doctor. This includes ongoing treatment by the provider who is a nonattending doctor.
 - c. The claimant sought palliative care from that provider not compensable under section 92-01-02-40 after the claimant was provided notice that the palliative care service is not compensable.
 - d. The claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.
 - e. The claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of the work injury from the provider requesting payment for that treatment.
 - f. The claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.
9. A medical service provider may not bill for services not provided to a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.
 10. Pursuant to North Dakota Century Code section 65-05-33, a medical service provider may not submit false or fraudulent billings.
 11. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.
 12. When a claimant is seen initially in an emergency department and is admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission are part of the inpatient treatment.
 13. Hot and cold pack as a modality will be considered as a bundled charge and will not be separately reimbursed.
 14. When a medical service provider is asked to review records or reports prepared by another medical service provider, the provider shall bill review of the records using CPT code 99080 with a descriptor of "record review". The billing must include the actual time spent reviewing the records or reports and must list the medical service provider's normal hourly rate for the review.
 15. When there is a dispute over the amount of a bill or the necessity of services rendered, the organization shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code.
 16. If medical documentation outlines that a non-work-related condition is being treated concurrently with the compensable injury and that condition has no effect on the compensable

injury, the organization may reduce the charges submitted for treatment. In addition, the attending doctor must notify the organization immediately and submit:

- a. A description or diagnosis of the non-work-related condition.
- b. A description of the treatment being rendered.
- c. The effect, if any, of the non-work-related condition on the compensable injury.

The attending doctor shall include a thorough explanation of how the non-work-related condition affects the compensable injury when the doctor requests authorization to treat the non-work-related condition. Temporary treatment of a non-work-related condition may be allowed, upon prior approval by the organization, provided the condition directly delays recovery of the compensable injury. The organization may not approve or pay for treatment for a known preexisting non-work-related condition for which the claimant was receiving treatment prior to the occurrence of the compensable injury, which is not delaying recovery of the compensable injury. The organization may not pay for treatment of a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of a non-work-related condition is being rendered, the attending doctor shall submit reports monthly outlining the effect of treatment on both the non-work-related condition and the compensable injury.

17. In cases of questionable liability when the organization has not rendered a decision on compensability, the provider has billed the claimant or other insurance, and the claim is subsequently allowed, the provider shall refund the claimant or other insurer in full and bill the organization for services rendered.
18. The organization may not pay for the cost of duplicating records when covering the treatment received by the claimant. If the organization requests records in addition to those listed in subsection 5 or records prior to the date of injury, the organization shall pay ~~a minimum charge of five dollars for five or fewer pages and the minimum charge of five dollars for the first five pages plus thirty five cents per page for every page after the first five pages~~ a charge of no more than twenty dollars for the first twenty-five pages and seventy-five cents per page after twenty-five pages. In an electronic, digital, or other computerized format, the organization shall pay a charge of thirty dollars for the first twenty-five pages and twenty-five cents per page after twenty-five pages. This charge includes any administration fee, retrieval fee, and postage expense.
19. The provider shall assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes will be returned to the provider.
20. Billing codes must be found in the most recent edition of the physician's current procedural terminology; health care financing administration common procedure coding system; code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.
21. A provider shall comply within thirty calendar days with the organization's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the organization's determination of compensability, medical necessity, or excessiveness or the organization may refuse payment for services provided by that provider.
22. A provider may not bill a claimant a fee for the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or bill the

claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.

History: Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2008; July 1, 2010; April 1, 2012; April 1, 2014; April 1, 2016; [July 1, 2017](#).

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-28.2

TITLE 96
BOARD OF CLINICAL LABORATORY PRACTICE

JULY 2017

CHAPTER 96-02-02
LICENSURE

Section

96-02-02-01	General <u>Initial</u> License Requirements
96-02-02-02	Requirements for Specific Licenses
96-02-02-03	Reciprocity
96-02-02-04	License Renewal - Licenses Are Renewable Biennially
96-02-02-05	Registration Refused, Revoked, or Suspended [Repealed]
96-02-02-06	Inactive Status [Repealed]

96-02-02-01. ~~General~~Initial license requirements.

The following requirements apply to all applicants seeking initial licensure by the board:

1. A completed application form.
2. Payment of the appropriate application fee as set by the board.
3. Evidence of the required education ~~and that the~~.
4. The applicant has passed a national certifying examination approved by the board.
5. The applicant must meet one or more of the following conditions:

- a. The applicant has passed a national certifying examination approved by the board within two years of the date of application for initial licensure.
- b. The applicant has practiced by performing clinical laboratory testing as defined in subsection 5 of North Dakota Century Code section 43-48-01 for a total of three hundred hours within three years of the date of application for initial licensure. Proof of practice by performing clinical laboratory testing must be provided by the applicant and may be evaluated by the board for sufficiency.
- c. The applicant has obtained thirty continuing education hours within two years of the date of application for initial licensure. The continuing education hours obtained must satisfy the requirements for continuing education established in section 96-02-04-01.

- ~~4.6.~~ All applications must be signed ~~and notarized~~ or attested to electronically.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017.

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-04, 43-48-06, 43-48-07, 43-48-08, 43-48-09, 43-48-13

96-02-02-02. Requirements for specific licenses.

1. Medical technologist (clinical laboratory scientist) must have a ~~bachelor of science or a bachelor of arts~~bachelor's degree in a science-related discipline and have passed a national certifying examination approved by the board.
2. A clinical laboratory specialist must have a ~~baccalaureate~~bachelor's or higher degree with a major in one of the chemical, physical, or biological sciences and may only perform functions directly related to the person's particular specialty.

A clinical laboratory specialist must pass a national certifying examination approved by the board in a specialty area. A license issued to a clinical laboratory specialist will designate the area of specialty.

3. A clinical laboratory technician or medical laboratory technician must successfully complete the academic requirements of a structured clinical educational program recognized by the board and must pass a national certifying examination approved by the board.
4. The board may issue a provisional permit to a person who has applied for licensure and is eligible to take a board-recognized national certifying examination.

The provisional permit may not exceed one year. At the board's discretion, the permit may be renewed a maximum of two consecutive times for a period of one year each.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017.

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-04, 43-48-07, 43-48-08, 43-48-09, 43-48-11

96-02-02-03. Reciprocity.

The board will evaluate the submission of requests for reciprocity for licensure on an individual basis and grant such only upon a finding that the requirements for licensure in another state or jurisdiction are equal to or more stringent than those of North Dakota and that the applicant's license in another state or jurisdiction is in good standing. The board may deny a request for reciprocity for licensure if the applicant has had disciplinary action taken against him or her or has engaged in conduct that violates the standards of section 96-02-09-02 or conduct that meets the requirements for discipline under North Dakota Century Code section 43-48-15 even if the applicant is currently in good standing in another state or jurisdiction. If an individual applying for licensure by reciprocity under this section has been licensed previously by the board to practice in North Dakota, the individual must also meet the continuing education requirements of section 96-02-04-01 before being licensed under this section.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017.

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-04

96-02-02-04. License renewal - Licenses are renewable biennially.

1. ~~Applications~~Notice for renewal of license will be ~~mailed~~issued by the board in May of even-numbered years to all licenseholders. ~~Fees are payable~~An applicant for renewal must meet the continuing education requirements described in section 96-02-04-01 and submit a completed application and fees to the board on or before the first of July of the renewal year.
2. Proof of the required continuing education within the prior licensing period must be submitted with renewals.

3. If a licensee fails to receive the renewal notice, it is the responsibility of the licensee to contact the board before the first of July deadline.
4. ~~License fees are considered delinquent and a late charge is assessed if the renewal application is not received by the board office on or before the first of July of the renewal year~~If the applicant has not submitted a completed application and fees to the board office or has not met the continuing education requirements described in section 96-02-04-01 on or before the first of July of the renewal year, the applicant must pay the applicable late fee. A licensee may practice until his or her license expires under subsection 5 of this section or final disciplinary action is taken under section 96-02-09-01.
5. Licenses will expire if the applicant has not completed the continuing education requirements described in section 96-02-04-01 or has not submitted a completed renewal form and fees ~~are not received~~to the board within ninety days from the first of July of the renewal year. The board may waive the late fee or extend the period for license renewal due to extraordinary circumstances as determined in the board's sole discretion.
6. If ~~a person's~~an individual's license, ~~including one issued pursuant to the grandfather provisions of North Dakota Century Code section 43-48-12,~~ expires, the person must make application for a license in accordance with section 96-02-02-01 and meet the requirements of ~~section~~sections 96-02-02-02 and 96-02-04-01.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017.

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-04, 43-48-06, 43-48-14

CHAPTER 96-02-03

96-02-03-01. Fees.

The board shall set fees in such an amount as to reimburse the operational cost of licensure services rendered.

	2002	2004	2006 and thereafter
1. Initial license fee <u>for licensing</u>			
Category MT (CLS) and Specialists	\$70.00	\$80.00	\$90.00 <u>\$100.00</u>
Category CLT, MLT	\$50.00	\$60.00	\$70.00 <u>\$80.00</u>
2. Biennial renewal fee <u>License fee for biennial license renewal</u>			
Category MT (CLS) and Specialists	\$60.00	\$70.00	\$80.00 <u>\$90.00</u>
Category CLT, MLT	\$40.00	\$50.00	\$60.00 <u>\$70.00</u>
3. Late fees	\$50.00 <u>\$100.00</u>		
4. <u>Provisional permit fee</u>			<u>\$50.00</u>
5. <u>Provisional permit extension fee</u>			<u>\$50.00</u>

6. The provisional permit fee may be applied toward the initial fee for licensing if the application for licensure is submitted before the provisional permit expires.

7. Any request for the purchase of a list of licensees' names and employment addresses for offering continuing education opportunities, research, and professional organizations building lists of contacts in the state of North Dakota must be accompanied by a one hundred dollar administrative service fee.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017.

General Authority: NDCC 43-48-04, 43-48-06

Law Implemented: NDCC 43-48-04, 43-48-06

CHAPTER 96-02-04

96-02-04-01. Continuing education.

1. ~~A clinical laboratory practitioner licensed in North Dakota~~Effective until June 30, 2018, an individual licensed by the board must complete twenty continuing education contact hours for the two-year licensing period to maintain licensure in North Dakota after the individual's initial continuing education licensure period. During the individual's initial continuing education licensure period, continuing education hours must be earned pursuant to the following schedule:
 - a. Twenty continuing education hours are required if licensed after June thirtieth of the even-numbered year and before July first of the odd-numbered year.
 - b. Ten continuing education hours are required if licensed after June thirtieth and on or before December thirty-first of the odd-numbered year.
 - c. No continuing education hours are required if licensed on or after January first of an even-numbered year.
2. Effective July 1, 2018, an individual licensed by the board must complete twenty-four continuing education contact hours for the two-year licensing period to maintain licensure in North Dakota after the individual's initial continuing education licensure period. During the individual's initial continuing education licensure period, continuing education hours must be earned pursuant to the following schedule:
 - a. Twenty-four continuing education hours are required if licensed after June thirtieth of the even-numbered year and before July first of the odd-numbered year.
 - b. Twelve continuing education hours are required if licensed after June thirtieth and on or before December thirty-first of the odd-numbered year.
 - c. No continuing education hours are required if licensed on or after January first of an even-numbered year.
3. Before being relicensed in North Dakota, an individual who was licensed by the board but whose license has expired must complete all continuing education hours that were outstanding at the time the individual's license expired, plus additional continuing education hours within two years of the date of the application for licensure according to the following schedule:
 - a. No additional continuing education hours are required if the individual's license has been expired less than six months when the application for licensure is submitted.
 - b. Twelve additional continuing education hours are required if the individual's license has been expired six months or more but less than eighteen months when the application for licensure is submitted.
 - c. Twenty-four additional continuing education hours are required if the individual's license has been expired eighteen months or more when the application for licensure is submitted.
4. Board-approved continuing education must be directly related to or supportive of clinical laboratory practice. Continuing education includes:
 - a. Workshops, refresher courses, professional conferences, seminars, and educational programs presented by providers approved by the board.

- b. Presentations by licensee:
 - (1) Professional presentations, e.g., workshops, institutes. A presentation may be counted only one time and there is no limit on hours that may be earned under this paragraph.
 - (2) Community or service organization presentations. A general public presentation may be counted only one time and no more than three hours may be earned under this paragraph.
- c. Formal academic coursework. One credit hour class is equal to ten contact hours.
- d. Formal self-study course with a completion certificate, and there is no limit on hours under this subdivision.
- e. Research approved by the board.
- f. Supervised clinical practice approved by the board.
- g. Facility-based continuing education program. ~~No more than sixty percent of the required hours may be earned under this subdivision.~~

~~3.5.~~ Nonacceptable continuing education topics include courses in general safety not directly related to clinical laboratory practice, annual training required by a medical facility such as cardiopulmonary resuscitation or first aid, breath alcohol instrument training, personal reading of professional journals, committee meetings, computer classes, personal enrichment courses, and programs delivered through the mass media.

~~4.6.~~ The board requires verification of continuing education completion, which must be received by the board office on or before the licensure expiration date. Verification must include name of licensee; dates of attendance; title of program, course, or workshop; sponsor's name and address; and number of earned contact hours. Verification documentation must be submitted on a board-approved continuing education record form and include a copy of a continuing education certificate signed by the provider or sponsor.

~~5.7.~~ Failure to meet the continuing education requirements by the deadline [referenced in section 96-02-02-04](#) will result in nonrenewal of license.

~~6.8.~~ The board may waive [continuing education](#) requirements or allow exceptions due to extraordinary circumstances.

History: Effective June 1, 1991; amended effective May 1, 2002; [July 1, 2017](#).

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-04

CHAPTER 96-02-05

96-02-05-01. Name and address changes.

Any licensee must promptly report a change of ~~name or~~ contact information including the licensee's name, address, phone, and email address to the board in writing or by electronic communication.

History: Effective June 1, 1991; amended effective May 1, 2002; July 1, 2017.

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-04

CHAPTER 96-02-09

96-02-09-01. Disciplinary procedure.

1. Upon filing of a written and signed complaint alleging a licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15, the board shall notify the licensee of the complaint and require a written response from the licensee. The board may initiate a complaint on its own motion upon learning of conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15, and shall notify the licensee of the complaint and require a written response from the licensee.
2. The board may direct a board member to investigate the complaint. After completing the investigation, the board member will recommend whether the board should take disciplinary action against the licensee.
3. The board shall determine if there is a reasonable basis to believe the licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15. If the board determines there is not a reasonable basis to believe, the board will notify the complainant and the licensee. If the board determines there is a reasonable basis to believe, the board will proceed with a disciplinary action in accordance with North Dakota Century Code chapter 28-32.
4. The board may, at any time, offer or accept a proposal for informal resolution of the complaint or disciplinary action.

History: Effective May 1, 2002; amended effective July 1, 2017.

General Authority: NDCC 43-48-04

Law Implemented: NDCC 43-48-15

CHAPTER 96-02-10

96-02-10-01. Exempt tests and methods.

An individual, supervised by an individual licensed by the board, performing the following food and drug administration-waived tests and using the following methods, or performing tests determined by the board to be equivalent to those listed in this section, is exempt from the provisions of North Dakota Century Code chapter 43-48:

1. Any of the following tests by nonautomated or automated urinalysis by dipstick:
 - a. Bilirubin.
 - b. Blood.
 - c. Glucose.
 - d. Ketone.
 - e. Leukocyte.
 - f. Nitrate.
 - g. Potential of hydrogen (pH).
 - h. Protein.
 - i. Specific gravity.
 - j. Urobilinogen.
2. Fecal occult blood by any accepted method.
3. Ovulation test by visual color comparison.
4. Qualitative urine pregnancy test by visual color comparison.
5. Erythrocyte sedimentation rate by any accepted nonautomated method.
6. Whole blood glucose by any accepted single analyte method.
7. Spun microhematocrit by any accepted method.
8. Hemoglobin by single analyte instrument or manual copper sulfate method.
9. Any of the following tests by immunoassay using a rapid test device that detects antibodies or antigens:
 - a. Helicobacter pylori.
 - b. Influenza.
 - c. Mononucleosis.
 - d. Streptococcus group A.
 - e. Hepatitis C virus.
 - f. Respiratory syncytial virus.

10. Prothrombin time international normalized ratio by mechanical endpoint.
11. Antibodies to human immunodeficiency virus types 1 and 2 by clearview complete HIV 1/2 assay.
12. Total cholesterol by cholestech analyzer.
13. High-density lipoprotein cholesterol by cholestech analyzer.
14. Syphilis health check.
15. CoaguCheck XS system.
16. UltraCrit hematocrit.
17. Abaxis Piccolo Xpress analyzer, but only for the following analytes: total cholesterol, HDL cholesterol, triglycerides, and glucose.
18. i-STAT creatinine when performed by radiology technologists or technicians.

History: Effective January 1, 2006; amended effective January 1, 2008; April 1, 2012; April 1, 2013; July 1, 2017.

General Authority: NDCC 43-48-03, 43-48-04

Law Implemented: NDCC 43-48-03

TITLE 112
INTEGRATIVE HEALTH CARE

JULY 2017

CHAPTER 112-01-01

112-01-01-01. Organization and functions of the board of integrative health care.

1. **History.** The board of integrative health care was established in 2011 under North Dakota Century Code chapter 43-57 to provide a means to regulate integrative health care practitioners. The first integrative health care practitioners to be licensed and regulated by the board are naturopaths in accordance with North Dakota Century Code chapter 43-58 and music therapists in accordance with North Dakota Century Code chapter 43-59. Acupuncturists became licensed and regulated by the board in 2015 under North Dakota Century Code chapter 43-61. North Dakota is the sixteenth state of the United States to license naturopaths and the forty-fifth state to license acupuncturists.
2. **Functions.** The function of the board is to determine if acupuncturists, naturopaths, and music therapists meet the qualifications to practice in the state of North Dakota and to prevent unqualified acupuncturists, naturopaths, and music therapists from practicing in North Dakota. The board establishes and enforces the education, licensing examinations, and professional conduct of acupuncturists, naturopaths, and music therapists in accordance with North Dakota Century Code chapters 43-58 ~~and,~~ 43-59, and 43-61.
3. **Board membership.** The initial board consists of five to seven members appointed by the governor: one acupuncturist, one naturopath, one music therapist, one medical or osteopathic doctor, one advanced practice registered nurse, one pharmacist, and up to two public members. Members of the board serve three-year terms, except for the initial board members which shall be staggered. Two to three three-year terms expire each year. Board members annually elect from the board membership the chairman, vice chairman, secretary, and treasurer of the board.
4. **Secretary and treasurer.** The secretary and the treasurer are elected by the board.
5. **Executive director.** The board may hire an executive director to oversee the clerical needs of the board, and who will answer to the board chairman.
6. **Inquiries.** Any questions or suggestions concerning these rules should be sent to the executive director or to the secretary during any time period that the executive director position is unfilled.

History: Effective April 1, 2013; [amended effective July 1, 2017](#).

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02, 43-57-03

CHAPTER 112-01-04 LICENSEE DUTIES AND DISCIPLINARY MATTERS

Section

112-01-04-01	Unlicensed Practice
112-01-04-02	Code of Ethics
112-01-04-03	Unprofessional Conduct
112-01-04-04	Administrative Sanction
112-01-04-05	Report of Disciplinary Actions
112-01-04-06	Reporting Contagious or Infectious Diseases
112-01-04-07	Reporting Child Abuse
<u>112-01-04-08</u>	<u>Self Reporting Offenses and Actions</u>
<u>112-01-04-09</u>	<u>Supervision of Students</u>

112-01-04-01. Unlicensed practice.

Upon receipt of a complaint that a person is practicing without a license, the board may make a determination, as to whether a person is practicing without a license. In order to make this determination, the board may conduct an investigation to make a determination if an individual is unlicensed, including reviewing records, interviewing persons who may have knowledge of the unlicensed practice, contacting third parties to verify background, or requesting any other information that may help make the determination of unlicensed activity.

If the determination is made that an individual is unlicensed pursuant to this section, the board may send a letter to the person about whom the complaint was made directing that the person immediately cease and desist. The person will be given ten working days to submit an application to practice. If the person does not apply, or continues to practice without a license, the person may be referred to the state's attorney in the county in which the person is located for prosecution.

The board is not required to follow this procedure, and this procedure does not provide a criminal defendant with any additional rights, nor a defense against prosecution or conviction in a criminal proceeding.

History: Effective April 1, 2013; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02, 43-57-03, 43-57-11, 43-58-03, 43-59-03, 43-61-03

112-01-04-02. Code of ethics.

1. **Naturopaths.** The board adopts the 2011 edition of the American Association of Naturopathic Physicians Code of Ethics as the code of ethical conduct governing the practice of naturopathy.
2. **Music therapists.** The board adopts the 2011 edition of the Certification Board for Music Therapists Code of Professional Practice as the code of ethical conduct governing the practice of music therapy.
3. **Acupuncturists.** The board adopts the 2008 edition of the National Certification Commission of Acupuncture and Oriental Medicine (NCCAOM) as the code of ethical conduct governing the practice of acupuncture and oriental medicine.

History: Effective April 1, 2013; amended effective July 1, 2017.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03

112-01-04-06. Reporting contagious or infectious diseases.

To comply with the state law regarding contagious or infectious diseases, medical practitioner licensees shall immediately notify the health officer of the community of the existence of such diseases.

History: Effective April 1, 2013; amended effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03, 43-58-09, 43-61-09

Law Implemented: NDCC 23-07-01, 43-57-03, 43-58-09, 43-61-09

112-01-04-08. Self reporting of offenses and actions.

1. A licensee who has been convicted of an offense stated in subsections 6, 7, and 8 of section 112-01-04-03 shall notify the board within ten working days of conviction.

2. A licensee who has been officially disciplined by another licensing board in North Dakota or in another jurisdiction shall notify the board within ten working days of disciplinary notification.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-08

112-01-04-09. Supervision of students.

Licensees in good standing who have been in practice for one or more years may accept prospective professional students for limited practice observation, and may accept current professional students of recognized accredited schools for unpaid preceptorships. Prospective students and preceptor students may participate in observation of professional practice with the permission of patients. Preceptor students may assist in hands-on tasks if the student is under the direct supervision of a licensee, the student is in the clinical phase of their education, the patient grants permission, and the licensee has a recognized preceptor affiliation with an approved school within their own profession or the preceptee's profession. The licensee may not allow hands-on assistance with tasks that exceed the education and training of the student.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03

ARTICLE 112-04
ACUPUNCTURE LICENSURE

Chapter

<u>112-04-01</u>	<u>Admission to Practice Acupuncture</u>
<u>112-04-02</u>	<u>Authority of Acupuncturists</u>
<u>112-04-03</u>	<u>Continuing Acupuncture Education</u>

CHAPTER 112-04-01
ADMISSION TO PRACTICE ACUPUNCTURE

Section

<u>112-04-01-01</u>	<u>Definitions</u>
<u>112-04-01-02</u>	<u>Approval of Schools</u>
<u>112-04-01-03</u>	<u>Applications for Licensure</u>
<u>112-04-01-04</u>	<u>Licensure by Endorsement</u>
<u>112-04-01-05</u>	<u>Photograph</u>
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112-04-01-01. Definitions.

Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-61 are applicable to this title. In this title, unless the context or subject matter otherwise requires:

1. "Accreditation commission" means the accreditation commission for acupuncture and oriental medicine (ACAOM) or its successor. The successor must be an accrediting agency recognized by the United States department of education.
2. "Certification commission" means the national certification commission for acupuncture and oriental medicine or its successor.
3. "In accordance with acupuncture and oriental medicine training" means the practice of acupuncture and oriental medicine by means that are consistent with the education of an approved acupuncture school, are generally recognized as safe and effective, and generally considered to be within the accepted practice standards for the acupuncture profession.
4. "National board examinations" means the diplomate of acupuncture or the diplomate of oriental medicine certification examinations established by the certification commission, or its successor.
5. "Oriental medicine" means a system of healing arts that perceives the circulation and balance of energy in the body as fundamental to the well-being of the individual. It implements the theory through specialized methods of analyzing the energy of the body and treating with needle acupuncture or other oriental treatment modalities for the purpose of strengthening the body, improving energy balance, maintaining or restoring health, improving physiological function, and reducing pain. The definition of acupuncture in North Dakota Century Code section 43-61-01 includes aspects of oriental medicine which are appropriate for acupuncturists to include in their practice.

6. "Prescription drug" means a legend drug as defined by section 503(b) of the Federal Food, Drug and Cosmetic Act [21 U.S.C. 353 et seq.] and under its definitions its label is required to state "Rx only".

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-61-01

112-04-01-02. Approval of schools.

1. The board shall approve an acupuncture school that meets the following criteria:
 - a. Is accredited or a candidate for accreditation by the accreditation commission; and
 - b. Offers a residential graduate degree program with a curriculum of at least 1905 hours/105 credits.
2. Foreign schools may be considered for board approval if the requirement subdivision b of subsection 1 is met and graduates are approved to take the national board examination by the certification commission.
3. The board shall maintain an updated list of approved acupuncture schools in the United States and make it available upon inquiry.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03, 43-61-01

Law Implemented: NDCC 43-57-03

112-04-01-03. Applications for licensure.

Application shall be made on the official form issued by the board.

1. Applicants seeking licensure pursuant to the regular application procedure in North Dakota Century Code section 43-61-05 shall be considered when all of the following have been received:
 - a. A signed and dated completed official application form.
 - b. An official transcript of the national board examinations sent directly to the board from the certification commission verifying satisfactory passage of the national board examinations.
 - c. An official complete transcript sent directly to the board from the approved acupuncture school from which the applicant graduated verifying date of graduation and completion of clinical training.
 - d. The application fee and the initial license fee.
2. Applicants seeking a license or limited license pursuant to the grandfathering procedure in North Dakota Century Code section 43-61-06 shall submit the following documents for consideration:
 - a. A signed and dated completed official application form.
 - b. An official transcript from the certification commission verifying status as a certified diplomate.

- c. Documentation of practical postgraduate clinical experience, including dates, clinic contact information, and supervisor contact information for verification purposes.
- d. Documentation of North Dakota residency throughout calendar year 2015.
- e. Documentation of the practice of acupuncture in North Dakota in 2015.
- f. The application fee and the licensing fee.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-04, 43-61-05, 43-61-06

112-04-01-04. Licensure by endorsement.

An application for license by endorsement must be considered by the board if the following conditions are met:

1. The candidate has graduated from and holds a degree from an approved acupuncture school.
2. The candidate holds a current valid license in good standing to practice as an acupuncturist in another state or jurisdiction. Official written verification of licensure status must be received by the board from the other state or jurisdiction.
3. The examination requirements of the other state or jurisdiction are substantially similar as in North Dakota.
4. The candidate has filed with the board an official application for licensure by endorsement, a copy of the diploma from an approved acupuncture school, a copy of the current valid license, and the required application fee.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-07

112-04-01-05. Photograph.

An unmounted passport photograph of the applicant must be attached in the space provided on the application before filing with the board. The photograph must have been taken within one year of the date of application.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-04, 43-61-04

112-04-01-06. Examination requirements.

1. Those applicants for licensure who have obtained a passing score on the national board examinations shall be deemed to have met the examination requirement specified in North Dakota Century Code section 43-61-05.
2. The examination requirements for licensure must be successfully completed within four years from graduation. The board may grant an exception to this requirement for applicants who have concurrently pursued another graduate degree, and the applicant presents a verifiable, rational, and compelling explanation for not meeting the four-year time limit.
3. An applicant is permitted a maximum of five attempts to pass each part or component of the national board examination. If the applicant fails to pass each part or component of the

national board examination after five attempts, the applicant is not eligible to apply for a license until one year has passed and must reapply as a new applicant.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-05

112-04-01-07. License issued.

When the board determines a candidate has successfully graduated from an approved school, passed the national board examination, and is a person of good moral character, the board shall issue the candidate a license to practice acupuncture.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-06

Law Implemented: NDCC 43-57-05, 43-57-06

112-04-01-08. Location of practice - License displayed.

1. If a licensed acupuncturist moves from the acupuncturist's primary location, the office of the executive director must be notified of the change of location of the acupuncturist. A current certificate or duplicate certificate issued by the board must at all times be displayed prominently in each office location of the acupuncturist. In case of loss or destruction, a duplicate certificate may be issued by the board upon receipt of satisfactory evidence of the loss or destruction.
2. A licensed acupuncturist providing temporary services in offsite locations must carry a duplicate license wallet card and show the card upon request.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-03

112-04-01-09. License renewal.

1. Every acupuncturist who has been licensed by the board shall renew the license by remitting a renewal fee on or before December thirty-first of each even-numbered year and completing the questionnaire provided by the board. For applicants who receive an initial license after July first in an even-numbered year, the license is deemed to be automatically renewed on December thirty-first for an additional two years without payment of an additional renewal fee.
2. The applicant for renewal shall certify on the questionnaire that the continuing education requirements have been or will be met by December thirty-first. The applicant shall keep records of completed continuing education. The board shall conduct random compliance audits of licensees. Failure to complete continuing education is considered unprofessional conduct.
3. A license renewal application received on or after January first of an odd-numbered year is a late renewal and requires a new completed application form, the renewal fee, plus a late fee set by the board. Proof of appropriate continuing education hours must be presented. A license that has not been renewed by December thirty-first in an even-numbered year is a lapsed license.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-06, 43-57-07, 43-61-03

112-04-01-10. Lapsed licenses.

Once a license has lapsed, the person who held the lapsed license may not practice acupuncture or use a title reserved under state law for individuals who are licensed by the board until a new license is issued. A person whose license has lapsed but who continues to practice acupuncture or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

History: Effective July 1, 2017.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-11, 43-61-03

112-04-01-11. Fees.

The board charges the following nonrefundable fees:

1. **Application.** The fee for filing an application for an initial license is fifty dollars.
2. **Initial license.** The fee for an initial license is three hundred dollars. The licensing period is biennial, ending on December thirty-first every even-numbered year. The initial license fee shall be prorated quarterly based upon the time period remaining in the two-year cycle at application.
3. **Temporary license.** The temporary license fee for acupuncturists shall be one hundred dollars. The cost of the temporary license fee will be applied toward the initial license fee upon receipt of application for the initial license.
4. **Renewal.** Licenses renew on December thirty-first every even-numbered year. The renewal fee is two hundred dollars for active status and one hundred dollars for inactive status.
5. **Change of status.** To change from inactive to active status, the fee must be prorated on a quarterly basis on the time period remaining in the two-year cycle.
6. **Late filing.** An additional late filing fee must be charged on renewal applications not received by December thirty-first every even-numbered year. The late filing fee for acupuncturists is seventy-five dollars.
7. **Duplicate license.** The duplicate license fee for an acupuncture license certificate is twenty-five dollars. The duplicate license fee for an acupuncturist license wallet card is twenty dollars.

History: Effective July 1, 2017.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-61-05

CHAPTER 112-04-02 AUTHORITY OF ACUPUNCTURISTS

Section

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<u>112-04-02-04</u>	<u>Needle Acupuncture Administration; Acupuncture Point Stimulation</u>
<u>112-04-02-05</u>	<u>Requirement to Refer</u>

112-04-02-01. Rights and Privileges.

Unless otherwise limited by statute, licensed acupuncturists are entitled to the rights and privileges of health care practitioners in North Dakota in accordance with acupuncture and oriental medicine training. The practice of acupuncture in North Dakota Century Code section 43-61-01 includes aspects of oriental medicine, such as:

1. Using oriental medicine theory to assess and diagnose a patient;
2. Using oriental medicine theory to develop a plan to treat a patient; and
3. Prescribing and administering oriental medicine therapies as part of a patient treatment plan.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-08

112-04-02-02. Advertising.

Licensed acupuncturists may advertise their practice in any legitimate manner set forth in the code of ethics adopted by the board under section 112-01-04-02, except as limited or prohibited by statute. Doctoral level licensed acupuncturists may use the prefix "doctor" or "Dr." in accordance with an accredited doctoral acupuncture degree but may not advertise any acupuncture title or designation except those established under North Dakota Century Code chapter 43-61-03.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-03, 43-61-08

112-04-02-03. Authority to administer, prescribe, and dispense.

The practice of acupuncture includes the administration, prescription, dispensing, ordering, or performing of the following based on oriental medicine principles:

1. Food, nutritional supplements, herbs, and patent herbal remedies.
2. Health counseling, nutritional therapy, herbal therapy, oriental massage, exercises, and breathing techniques.
3. Acupuncture point stimulation by acupuncture needles, auriculotherapy, cupping, electricity, heat, dermal friction, gua sha, and touch.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-61-08

112-04-02-04. Needle acupuncture administration; acupuncture point stimulation.

1. A licensed acupuncturist shall administer needle acupuncture in accordance with acupuncture and oriental medicine training. Needles used in the practice of acupuncture shall only be prepackaged, single use, sterile acupuncture needles. These needles only may be used on an individual patient in a single treatment session and disposed of according to federal standards for biohazard waste. Acupuncture points must be cleaned with alcohol or another approved clean needle technique (CNT) antiseptic prior to needle insertion.
2. A licensed acupuncturist must have a plan to manage patient adverse events, including allergy.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-08

112-04-02-05. Requirement to refer.

1. A licensed acupuncturist shall request a consultation or written diagnosis from a licensed physician for patients with potentially serious disorders. A referral to a licensed physician is required when a patient has signs or symptoms of:
 - a. Cardiac conditions including uncontrolled hypertension;
 - b. Acute, severe abdominal pain;
 - c. Acute, undiagnosed neurological changes;
 - d. Unexplained weight loss or gain in excess of fifteen percent of the body weight in less than a three-month period;
 - e. Suspected fracture or dislocation;
 - f. Suspected systemic infections;
 - g. Any serious undiagnosed hemorrhagic disorder; and
 - h. Acute respiratory distress without previous history.
2. A licensed acupuncturist shall refer a patient to a licensed physician in the event of:
 - a. Suspected pneumothorax; or
 - b. Broken acupuncture needle.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-08

CHAPTER 112-04-03
CONTINUING ACUPUNCTURE EDUCATION

Section

<u>112-04-03-01</u>	<u>Continuing Education Requirements</u>
<u>112-04-03-02</u>	<u>Exceptions</u>
<u>112-04-03-03</u>	<u>Board Approval</u>
<u>112-04-03-04</u>	<u>Board Audit</u>
<u>112-04-03-05</u>	<u>Inactive Status</u>

112-04-03-01. Continuing education requirements.

1. All active licensees shall complete a minimum of thirty hours of approved continuing education credit during the biennial licensing cycle. Only hours earned at board-accepted continuing education programs are allowed. One hour of credit is earned for every fifty minutes of actual class time.
 - a. CPR recertification is required each biennial cycle and is granted four continuing education units.
 - b. Two credits are required in either ethics or safety each biennial cycle.
2. An extension of time or other waiver to complete the hours required in subsection 1 must be granted upon written application if the licensee failed to meet the requirements due to illness, military service, medical or religious missionary activity, or other extenuating circumstance.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03, 43-61-04

Law Implemented: NDCC 43-57-03, 43-57-07, 43-61-03

112-04-03-02. Exceptions.

The following licensed acupuncturists are not required to meet the continuing education requirements of this chapter:

1. Acupuncturists who are enrolled in full-time graduate acupuncture education programs (doctoral degrees, residencies, and fellowships).
2. Acupuncturists who hold a provisional temporary license, and acupuncturists who have not renewed their licenses for the first time since being granted a regular permanent license by the board.
3. Acupuncturists who have retired from the active practice of acupuncture and oriental medicine. This exception is available only to retired acupuncturists who have completely and totally withdrawn from the practice of acupuncture and oriental medicine. Any acupuncturist seeking to be excused from completing continuing acupuncture education requirements under this subsection must submit an affidavit to the board (on the board's form) certifying that the acupuncturist will render no acupuncture services during the term of the next continuing education reporting period.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03, 43-61-04

Law Implemented: NDCC 43-57-03, 43-57-07

112-04-03-03. Board approval.

1. In order to receive board approval, a continuing education program must be accepted by the credentialing commission.
2. It is the responsibility of the licensee to verify the appropriate credit designation with the source of the program. All licensees shall verify eligibility for continuing credit and the appropriate credit designation before taking any particular course.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03, 43-61-04

Law Implemented: NDCC 43-57-03, 43-57-07, 43-61-03

112-04-03-04. Board audit.

Each biennium the board must audit randomly selected acupuncturists to monitor compliance with the continuing education requirements. Any acupuncturist so audited shall furnish documentation of compliance, including the name of the continuing education provider, name of the program, hours of continuing education completed, dates of attendance, and verification of attendance. Any acupuncturist who fails to provide verification of compliance with the continuing education requirements is subject to revocation of licensure. To facilitate the board's audits, every acupuncturist shall maintain a record of all continuing education activities in which the acupuncturist has participated. Every acupuncturist shall maintain those records for a period of at least two years following the time when those containing education activities were reported to the board.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03, 43-61-04

Law Implemented: NDCC 43-57-07, 43-57-08, 43-61-03

112-04-03-05. Inactive status.

On or before December thirty-first of each even-numbered year, licensees may elect to renew their licenses as inactive. The inactive status is at a reduced fee for those licensees who do not practice, consult, or provide any service relative to the acupuncture profession in the state. The inactive licensee does not have to provide proof of continuing education hours. Any inactive licensee may activate the license at any time by paying an additional fee and showing proof of thirty hours of continuing acupuncture education in the preceding twenty-four months.

History: Effective July 1, 2017.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-07, 43-57-08