

## CHAPTER 112-01-04 LICENSEE DUTIES AND DISCIPLINARY MATTERS

### Section

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### **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

### **112-01-04-03. Unprofessional conduct.**

The board may revoke, suspend, or deny a license to any person otherwise qualified or licensed by the board who is found to have committed unprofessional conduct. Unprofessional conduct includes the following:

1. Exploitation of patients for financial gain, which includes:
  - a. Overutilization of services. Overutilization is defined as services rendered or goods or appliances sold to a patient for the financial gain of the licensee or a third party, which are excessive in quality or quantity to the justified needs of the patient.
  - b. Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
  - c. Exercising undue influence on a patient or client, including the promotion or the sale of services, goods, or appliances in such a manner as to exploit the patient or client.
  - d. The administration of treatment or the use of diagnostic procedures which are excessive as determined by the customary practices and standards of the local community of licensees.
2. Willfully harassing, abusing, or intimidating a patient, either physically or verbally.
3. Failing to maintain a patient record and a billing record for each patient, which accurately reflects the evaluation or treatment, or both, of the patient and the fees charged to the patient. Unless otherwise provided, all patient records must be retained for at least ten years.
4. The willful or grossly negligent failure to comply with the substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
5. Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public, including habitual alcohol abuse, illegal use of controlled substances, or conducting unauthorized experiments or tests upon patients.
6. Conviction of a crime which is substantially related to the qualifications, functions, or duties of a profession or occupation regulated by the board.
7. Conviction of a felony, or any offense involving moral turpitude, dishonesty, or corruption.
8. Violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
9. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as a licenseholder or otherwise.
10. Knowingly making or signing any false certificate or other document relating to the practice of patient care which falsely represents the existence or nonexistence of a state of facts.
11. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate any provision of the law or the rules adopted by the board.
12. Making or giving any false statement or information in connection with the application for issuance of a license.
13. Participation in any act of fraud or misrepresentation.

14. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
15. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.
16. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate supervision professional services which a licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
17. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure, to perform them.
18. Advertising or soliciting for patronage that is not in the public interest, which includes:
  - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
  - b. Advertising or soliciting which guarantees any service or result.
  - c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
  - d. Advertising or soliciting which make claims relating to professional superiority which cannot be substantiated by the licensee.
  - e. Advertising or soliciting which is based upon a claim that the licensee uses a secret or special method of treatment and the licensee refuses to divulge the secret or special method of treatment to the board.
  - f. Advertising no out-of-pocket expenses or practicing the same.
19. Violation of any term of suspension or probation imposed by the board.
20. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient, even if the patient attempts to sexualize the relationship, except when the patient is the licensee's spouse.

**History:** Effective April 1, 2013.

**General Authority:** NDCC 43-57-03

**Law Implemented:** NDCC 43-57-08

#### **112-01-04-04. Administrative sanction.**

An administrative sanction shall be imposed in the amount of three times the application fee for any applicant or licensee regulated by the board who provides false or deceptive information with regard to any material fact concerning eligibility for initial license or renewal after verifying or certifying that the information provided is true. This includes all material information provided in an initial license application, an annual renewal, or a report of compliance with mandatory continuing education requirements. The imposition of an administrative sanction under this section is not a disciplinary action of the board; however, it does not preclude the board from also imposing disciplinary action, or other penalties provided by law, for the same conduct in appropriate cases. An applicant or licensee may challenge the imposition of an administrative sanction under this section in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge.

**History:** Effective April 1, 2013.

**General Authority:** NDCC 43-57-03, 43-57-08

**Law Implemented:** NDCC 43-57-08

**112-01-04-05. Report of disciplinary actions.**

The board will report all final disciplinary actions to the federal health care integrity and protection database. The board may also publish all final disciplinary actions in select state newspapers.

**History:** Effective April 1, 2013.

**General Authority:** NDCC 43-57-03

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

**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

**112-01-04-07. Reporting child abuse.**

A licensee having knowledge of or reasonable cause to suspect that there is child abuse or neglect is mandated to report the circumstances to the department of human services if the knowledge or suspicion is derived from information received by the licensee in the licensee's professional capacity.

**History:** Effective April 1, 2013.

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

**Law Implemented:** NDCC 50-25.1-03

**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