CHAPTER 54-02-07
DISCIPLINARY ACTION

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54-02-07-01. Definition of unprofessional conduct.

Repealed effective August 1, 1988.

54-02-07-01.1. Grounds for discipline.

Practice inconsistent with acceptable standards of nursing practice by a licensee, applicant, or registrant means behavior that may place a client or other person at risk for harm or be in violation of the standards of nursing practice. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior, or other behavior that demonstrates professional misconduct and includes the following:

1. Failure to provide nursing care because of client diagnosis, age, sexual preference, gender, marital status, socioeconomic status, disability, race, or religion.

2. Cause or permit verbal, physical, emotional, or sexual abuse or harassment or intimidation to a client, client's family, or other health care provider.

3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.

4. Failure to appropriately supervise persons to whom nursing interventions have been assigned or delegated.

5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.

6. Performance of nursing interventions in a manner inconsistent with acceptable nursing standards.

7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of board records or client, employee, or employer records.

8. Failure to adhere to the licensee's, registrant's, or applicant's professional code of ethics or other applicable standards governing the individual's practice.

9. Misappropriation of property, including any real or personal property of the client, employer, or any other person or entity or failure to take precautions to prevent such misappropriation.

10. Abandon or neglect a client who is in need of or receiving nursing care.

11. Failure to comply with mandatory requirements to report any violation of the Nurse Practices Act or duly promulgated rules, regulations, or orders of the board.

12. Practice nursing or assist in the practice of nursing while under the influence of alcohol or unauthorized drugs or while exhibiting impaired behavior.

13. Alter or falsify a license, registration, transcript, diploma, certificate, program of study, or continuing education document.

14. Use or permit the use of a nursing license or registration that has been fraudulently purchased, created, obtained, issued, counterfeited, or altered.

15. Failure to submit to a mental health, chemical dependency, or physical evaluation within the time frame required by the board.

16. Violate any term of probation, condition, or limitation imposed by the board.

17. Failure to adhere to professional boundaries with a client or client's family.

18. Failure to comply with licensure or registration requirements.

19. Submit to a drug screen that results in a positive test for unauthorized drugs.

20. Failure to provide a written notice or report required under section 54-02-07-03.1 of this chapter.

History: Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998; June 1, 2002; April 1, 2004; April 1, 2011; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-02. Definitions.

Repealed effective June 1, 2002.

54-02-07-03. Complaints.

Repealed effective December 1, 1995.

54-02-07-03.1. Reporting violations.

Protection of the public is enhanced by reporting of incidents that may be violations of North Dakota statutes or grounds for discipline by the board. Licensees, registrants, applicants, or citizens should use the following process to report any knowledge of acts or omissions of any individual that violate North Dakota Century Code chapter 43-12.1 or these rules:

1. **Minor incident.** If the act or omission meets the criteria for management of a minor incident, the applicant, licensee, or registrant should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's or

registrant's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.

a. A minor incident may be handled in the practice setting with a corrective action process if all the following factors exist:

(1) Potential risk of harm to others is low;

(2) There is no pattern of recurrence;

(3) The licensee or registrant exhibits evidence of remediation and adherence to standards of nursing practice; and

(4) The corrective action process results in the licensee or registrant possessing the knowledge, skills, and abilities to practice nursing safely.

b. Other factors may be considered in determining the need to report such as the significance of the event in the particular practice setting, the situation in which the event occurred, and the presence of contributing or mitigating circumstances in the nursing care delivery system.

c. Nothing in this rule is intended to prevent reporting of a minor incident or potential violation directly to the board.

2. **Major incident.** If the act or omission is a major incident or factors are present that indicate a duty to report, the licensee, applicant, or registrant and the licensee's, applicant's, or registrant's supervisor must report the alleged violation to the board in the manner and form provided by the board. The report should include requested information about the act or omission, the individuals involved, and the action taken within the practice setting.

3. **Termination of employment.** When a licensee, applicant, or registrant terminates from the practice setting, either voluntarily or by request, due to conduct that may be grounds for discipline under the Nurse Practices Act, a report shall be made to the board by the licensee, applicant, or registrant and by the licensee's, applicant's, or registrant's supervisor in the manner and form provided by the board.

4. **Self-reporting.** A licensee, registrant, or applicant shall provide written notice of explanation and a copy of the applicable documents to the board within thirty days from the date of any criminal, malpractice, administrative, civil, or disciplinary action in another jurisdiction or any other action taken against the licensee, registrant, or applicant for any conduct that may affect patient safety or otherwise relates adversely to the practice of nursing.

History: Effective December 1, 1995; amended effective June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-11

54-02-07-04. Investigation.

Complaints, requests for investigation, and reports of acts or omissions that are in violation of North Dakota Century Code chapter 43-12.1 or are grounds for disciplinary action will be investigated by the board or by its direction in order to determine whether sufficient grounds exist to file a complaint according to North Dakota Century Code chapter 28-32. The board or its investigative panel may subpoena witnesses, records, and any other evidence relating to the investigation. Any medical record of an individual, or any other document containing personal health information which is obtained by the board, is an exempt record as defined in North Dakota Century Code section 44-04-17.1.

History: Effective August 1, 1988; amended effective December 1, 1995; July 1, 2008; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-13

54-02-07-04.1. Evidence and evaluation of treatment.

The board may require the individual subject to an investigation to submit to a mental health, chemical dependency, or physical evaluation if, during the course of the investigation, there is reasonable cause to believe that any licensee, registrant, or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs. The board may require a copy of the evaluation to be submitted from the evaluating professional directly to the board.

1. Upon failure of the person to submit to the evaluation within thirty days of the request, the board may suspend the individual's license or registration or deny or suspend consideration of any pending application until the person submits to the required evaluation.

2. The licensee, registrant, or applicant shall bear the cost of any mental health, chemical dependency, or physical evaluation and treatment required by the board.

3. The board may suspend or revoke an individual's license or registration if it is determined that the individual is unsafe to practice. The suspension or revocation will remain in effect until the individual demonstrates to the satisfaction of the board the ability to safely return to the practice of nursing or assist in the practice of nursing.

4. The board may deny the individual's application for licensure or registration if it is determined that the individual is unsafe to practice. The denial will remain in effect until the individual demonstrates to the satisfaction of the board the ability to safely practice nursing or assist in the practice of nursing.

History: Effective June 1, 2002; amended effective July 1, 2008; April 1, 2011; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-05. Settlements.

Repealed effective December 1, 1995.

54-02-07-05.1. Disposition.

Requests for investigation may result in:

1. Informal resolution and disposition by the board;

2. Formal resolution and disposition by the board. The board may use an administrative law judge to preside over the entire administrative proceeding and prepare recommended findings of fact, conclusions of law, and recommended order for board consideration, or the board may use a procedural hearing officer for the conduct of the hearing at which a majority of board members must be present at the hearing;

3. Dismissal. If the board's investigative panel determines that the alleged violation is frivolous, would not constitute grounds for disciplinary action, is outside the jurisdiction of the board, or is otherwise inappropriate for board action, the complainant and the affected licensee or registrant shall be notified in writing that the board will not pursue the matter, stating the grounds for the decision;

4. Referral to another agency; or

5. Other action as directed by the board.

History: Effective December 1, 1995; amended effective June 1, 2002; July 1, 2008; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-05.2. Emergency suspension.

The executive director or the executive director's authorized designee may issue, upon authorization from the board's investigative panel, an emergency suspension of a license, registration, permit, or privilege to practice when continued practice of a licensee, registrant, applicant, or any individual with authority to practice nursing under any privilege would constitute a continuing and imminent threat to the public welfare.

1. The order of emergency suspension shall take effect upon written notice to the licensee, registrant, applicant, or any other individual with authority to practice nursing under any privilege and shall remain in effect until either retracted, modified, or superseded by final disciplinary action by the board or upon agreement between the board and the licensee, registrant, applicant, or individual. If a hearing is not requested by the licensee, registrant, applicant, or individual within twenty days of the notice, the emergency suspension shall become effective as a final order, for a suspension period of five years, without further notice.

2. In cases when disciplinary action is imposed, the board may additionally order that the emergency suspension continue in effect until the later of expiration of the time permitted for appeal or termination of the appellate process.

History: Effective June 1, 2002; amended effective April 1, 2011; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-05.3. Surrender of license or registration.

The board may accept the return and surrender of a license or registration without formal charges, notice, or opportunity of hearing if the licensee or registrant surrenders the license or registration to the board and executes a statement that the individual does not desire to be licensed or registered.

An individual who is under investigation for violation of North Dakota Century Code chapter 43-12.1 may surrender a license or registration to the board. Any license or registration surrender shall be deemed to be an admission of the alleged facts of any pending investigation or disciplinary matter.

1. A surrender deactivates the license or registration at the time of its relinquishment.

2. The surrender of a license or registration is disciplinary action and shall be reported and processed in the same manner as final disciplinary actions of the board.

3. Surrender of a license or registration shall not preclude the board from investigating or completing a disciplinary proceeding.

4. Individuals who surrender their licenses or registrations are not eligible to seek reinstatement of their license or registration for a minimum of two years and shall comply with the requirements for reinstatement of license or registration.

History: Effective June 1, 2002; amended effective April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-05.4. Cease and desist order.

When it appears by credible evidence that a cease and desist order may be necessary, the executive director of the board or the executive director's authorized designee may issue an order directing a licensee, registrant, applicant, or any other individual with authority to practice nursing under any privilege to cease and desist certain actions.

History: Effective July 1, 2008; amended effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-06. Board decision.

The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice or to reinstate a license or registration will be communicated to the licensee or registrant in the form of a board order. In addition to the terms and conditions imposed by the board, the following may apply:

1. **Revocation.** If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reinstatement for licensure or registration by the individual. The national nursing licensing examination may be waived by the board as a condition for the reinstatement of a previously revoked license. The initial licensure or registration fee will be assessed for the reinstatement of a revoked license or registration.

2. **Suspension.** If the board issues a suspension order, it may also indicate the specific action necessary for the reinstatement of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current renewal fee will be required for reinstatement of a suspended license or registration.

3. **Encumbrance.** If the board issues an encumbrance order, the license shall be designated in the board's records as "encumbered" or as the board may otherwise require. If a licensee or registrant has more than one license and registration, the encumbrance applies to all licenses and registrations.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2011; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 28-32-13, 43-12.1-14

54-02-07-07. Fees.

1. Costs and disbursements, including witness fees and reimbursement of the board's expenses in any administrative hearing or other proceeding, may be recovered from the licensee, applicant, or registrant following any disciplinary action.

2. Penalty fees for each separate violation as established by the board may be imposed against the licensee, applicant, or registrant following any disciplinary action.

3. Administrative fees may be imposed by the board against the licensee, applicant, or registrant following the issuance of nondisciplinary action.

4. If a witness is subpoenaed by the board to appear at the request of the licensee or registrant, the licensee or registrant is to deposit with the board sufficient funds to cover expenses for mileage, food, lodging, and witness fees as allowed by state reimbursement policies.

5. In the case of any request by the licensee, applicant, or registrant for the subpoena by the board of an expert witness, sufficient funds will also be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee, applicant, or registrant must be made in writing.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 28-32-26, 43-12.1-13

54-02-07-08. Application for reinstatement.

Any person whose license, privilege, or registration has been suspended, surrendered, or revoked by the board shall submit a written application for reinstatement in the manner and form required by the board at the conclusion of the time period specified in the order. The burden of proof is on the licensee or registrant to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability or registrant's ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement, or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-09. Practice without a license or registration.

1. During the first month of unauthorized practice, an individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be required to:

   a. Submit double the licensure or registration fee;

   b. Submit an administrative fee; and

   c. Complete all other licensure or registration requirements as established by the board.

2. After the first month of unauthorized practice, an individual who has been unintentionally practicing nursing or assisting in the practice of nursing without proper authorization shall be required to:

   a. Submit double the licensure or registration fee;

   b. Submit an administrative fee;

   c. Submit to a criminal history check;

   d. Successfully complete a course of study on the North Dakota Nurse Practices Act within sixty days; and

   e. Complete all other licensure or registration requirements as established by the board.

3. The license or registration of an individual who has unintentionally practiced nursing or assisted in the practice of nursing without proper authorization shall be automatically suspended without further proceedings if the requirements of the license or registration are not met within the time specified by the board. The suspension shall remain in effect until the board receives satisfactory evidence of successful completion of the requirements for licensure or registration.

4. If an unlicensed assistive person, whose registration has expired, assists in the practice of nursing without a current registration for a period not exceeding four months from the person's initial date of employment, and if the person has not previously been determined to have assisted in the practice of nursing without a current registration, then the provisions of subsections 1, 2, and 3 of this section shall not apply to that person; instead, the person shall receive a letter of concern and be required to complete all registration requirements as established by the board.

5. Upon compliance with the board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.

6. Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within two years after the imposition of the board's order.

History: Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014; July 1, 2020.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-10. Nurse assistant without registry status.

Repealed effective February 1, 1998.

54-02-07-11. Applicant statement.

If an applicant for initial or renewal of licensure or registry status has been arrested, charged, or convicted of a felony offense, the applicant must provide the necessary information to determine the bearing upon that person's ability to serve as a licensed nurse or an unlicensed assistive person. Upon receipt of evidence of sufficient rehabilitation as outlined in North Dakota Century Code section 12.1-33-02.1, the license or registration may be issued. If the information does not substantiate the rehabilitation, the applicant may ask for a hearing pursuant to North Dakota Century Code chapter 28-32.

History: Effective December 1, 1995; amended effective June 1, 2002; April 1, 2014.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-12. Unlicensed assistive persons on board-recognized registries.

Repealed effective October 1, 2011.