

CHAPTER 56-02-06

DISCIPLINARY ACTION - PROCEDURE

Section

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56-02-06-01. Disciplinary action.

The board may take such disciplinary action as it deems reasonably necessary under the provisions of North Dakota Century Code chapter 43-13 when it appears to the satisfaction of the majority of the members of the board that any provisions of title 56 or North Dakota Century Code chapter 43-13 have been violated.

History: Effective December 1, 1987; amended effective April 1, 1990.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-21.1, 43-13-22, 43-13-23, 43-13-24, 43-13-25, 43-13-26

56-02-06-02. Disciplinary procedure.

Repealed effective April 1, 1990.

56-02-06-03. Appeals.

Repealed effective April 1, 1990.

56-02-06-04. Disciplinary grounds.

Without limiting the disciplinary powers of the board or grounds for discipline by the board, disciplinary action may be imposed against an optometrist upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement, document, or information or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with the application for issuance or renewal of a license.
2. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision of the law or the rules adopted by the board.
3. The willful or grossly negligent failure to comply with the provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
4. The making of false or misleading statements about the optometrist's skill or the efficacy of any medicine, treatment, or remedy.
5. The making of or filing a report or record which an optometrist knows to be false; intentionally or negligently failing to file a report or record required by federal or state law or rules; willfully impeding or obstructing such filing; or inducing another person to do so. Such reports or records include only those which the optometrist is required to make or file as a licensed optometrist.
6. The submission of fraudulent billing or reports to a third-party payer or obtaining any fee by fraud, deceit, or misrepresentation.

7. Failing to maintain a patient record and a billing record for each patient which accurately reflects the evaluation or treatment of the patient and the bills charged to the patient. Unless otherwise provided, all patient records must be retained for at least six years from the last contact with the patient.
8. Knowingly making or signing any false certificate or other document relating to the practice of optometric care which falsely represents the existence or nonexistence of a state of facts.
9. The performance of any dishonorable, unethical, or unprofessional conduct which has or is likely to deceive, defraud, or harm the public or endanger the public health, welfare, or safety.
10. Participation in any act of fraud or misrepresentation.
11. The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of optometry.
12. The practice of optometry under a false name or under an unauthorized assumed name.
13. Conviction of a crime which is substantially related to the qualifications, functions, or duties of an optometrist.
14. Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
15. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as an optometrist or otherwise.
16. The inability to practice optometry with reasonable skill and safety by reason of illness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.
17. The violation of any state or federal statute or regulation relating to controlled substances.
18. The unlawful prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug.
19. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
20. The failure to transfer medical records to another optometrist or to supply copies thereof to the patient or to the patient's representative when requested to do so in writing by the patient or the patient's designated representative. A reasonable charge for record copies may be assessed.
21. The willful or negligent violation of the confidentiality between doctor and patient, except as required by law.
22. A continued pattern of inappropriate care.
23. Gross negligence in the practice of optometry.
24. The administration of treatment or the use of diagnostic or therapeutic procedures which are clearly excessive according to customary practices and standards.
25. Aiding or abetting the practice of optometry by an unlicensed, incompetent, or impaired person or the failure to properly monitor an assistant.
26. 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 consultation professional services which a licensee is authorized to perform only in consultation with a licensed optometrist or medical doctor, except in an emergency situation where a person's life or health is in danger.

27. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
28. Physical or verbal harassment, abuse, misconduct, or exploitation related to the licensee's practice of optometry.
29. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for optometric services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
30. 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.
31. The employment or use of persons known as cappers or steerers to obtain business.
32. Participation in agreements or arrangements with any person, corporation, limited liability company, partnership, association, firm, or others involving rebates, kickbacks, fee-splitting, or special charges in exchange for professional optometric services, including the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any person as compensation or inducement for placement of business with that optometric office or optometrist.
33. 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 makes claims of professional superiority which cannot be substantiated by the licensee.
34. The violation of any action, stipulation, condition, or agreement imposed by the board.
35. The failure to furnish the board, its investigators, or representatives information legally requested.
36. The imposition by another state or jurisdiction of disciplinary action against a licensee based upon acts or conduct by the optometrist that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of disciplinary action taken by the other state or jurisdiction is conclusive evidence of that action.

History: Effective January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-21.1, 43-13-22, 43-13-26.1

56-02-06-05. Disciplinary reports.

Every optometrist shall promptly report to the secretary of the board any disciplinary action brought against such optometrist by any state or federal board or agency.

History: Effective January 1, 1995.

General Authority: NDCC 43-13-13

Law Implemented: NDCC 43-13-21.1, 43-13-22, 43-13-26.1