

**ARTICLE 17-03
DISCIPLINARY MATTERS**

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**CHAPTER 17-03-01
UNPROFESSIONAL CONDUCT**

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17-03-01-01. 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, but is not limited to, the following:

1. Exploitation of patients for financial gain, which includes:
 - a. Overutilization of chiropractic services. Overutilization is defined as services rendered or goods or appliances sold by a chiropractor to a patient for the financial gain of the chiropractor 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 or with reckless disregard harassing, abusing, or intimidating a patient, coworker, or individual who files a report against a licensee, either physically or verbally.
3. Failing to maintain the chiropractic standard of care for 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 seven years.
4. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate or failing to comply with 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 chiropractor.
7. Conviction of a felony or any offense involving sexual misconduct, 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 sexual misconduct, infliction of physical harm or bodily injury to another individual, corruption, 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 chiropractic care which falsely represents the existence or nonexistence of a state of facts.
11. Making or giving any false statement or information in connection with the application for issuance of a license.
12. Willful participation in any act of fraud or misrepresentation.
13. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
14. 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.
15. Practicing or offering to practice beyond the scope of work permitted by law.
16. Accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform.
17. 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.
18. 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, by experience, or by licensure, to perform them.
19. Chiropractor is responsible for all patient care provided by them, or patient care directly delegated by said chiropractor to their agent or employee. For the purposes of this subsection, "patient care" includes the practice of chiropractic, patient recordkeeping, patient billing, insurance billing, and communication with insurance companies.
20. 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. The term "specialist" in advertising may be utilized only by licenseholders who hold a current diploma or certification in a specialty area from the international chiropractic association, American chiropractic association, the Carrick institute, or other accredited certifying body as approved by the board upon request.
 - 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 of professional superiority which cannot be substantiated by the licensee.
 - e. Advertising or soliciting which is based upon a claim that the chiropractor uses a secret or special method of treatment and the chiropractor refuses to divulge the secret or special method of treatment to the board.
 - f. Advertising no out-of-pocket expenses or practicing same.
21. Violation of any term of suspension or probation imposed by the board.
 22. 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 chiropractor's spouse or significant other.

History: Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; January 1, 2016; January 1, 2017; January 1, 2021.

General Authority: NDCC 43-06-04.1, 43-06-15

Law Implemented: NDCC 43-06-15

17-03-01-02. Marketing.

1. Chiropractors who use marketing, either personally or through a professional company, are responsible for any representations made or statements given.
2. All marketing must comply with the rules pertaining to advertising adopted by the board.
3. Chiropractors who use marketing are required to keep records regarding the marketing for a period of two years. The records must include the script used, the name of the individual or company conducting the marketing, and the dates the marketing was conducted.
4. Chiropractors must make available to the board a copy of their marketing records upon the board's request.

History: Effective May 1, 1993; amended effective January 1, 2016; January 1, 2021.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-04.1, 43-06-15

17-03-01-03. Use of special purposes examination for chiropractic or the ethics and boundary examination for disciplinary purposes.

The board may require any person who is found to have committed unprofessional conduct to take the special purposes examination for chiropractic or the ethics and boundary examination provided by the national board of chiropractic examiners. Passing of one or both of these examinations may be made a requirement for continued licensure or to unencumber a suspended license.

History: Effective May 1, 1993; amended effective July 1, 2008.

General Authority: NDCC 28-32-02, 43-06-04.1

Law Implemented: NDCC 43-06-15

17-03-01-04. Code of ethics.

Repealed effective January 1, 2021.

17-03-01-05. Prepaid care plans.

Any arrangement or agreement between a chiropractor and a patient for a course of future treatment for which funds in an amount of five hundred dollars or more during any twelve month period are collected in advance of these services shall be considered a prepaid care plan within the meaning of this section. Services under a prepaid care plan may cost less than if the services were purchased individually. The reduction in cost must bear a reasonable relationship to the expense avoided by the provider due to reduced accounting and debt collection activities in accordance with Office of Inspector General (OIG) Advisory Opinion 08-03, regarding prompt payment discount. The prepaid care plan may provide for either an annual or monthly fee out of pocket. A chiropractor who offers such a plan is subject to the following requirements:

1. Escrow account. A designated escrow account insured by the FDIC shall be established for deposit of all funds received in connection with the prepaid care plan. Such funds may not be commingled with a chiropractor's personal or business account.
 - a. All instruments, including checks and deposit slips, must bear the phrase "Escrow Account."
 - b. The chiropractor shall maintain a clear accounting of all funds received, including date and from whom the funds were received.
 - c. The chiropractor shall maintain a clear accounting of all disbursements including the dates and to whom the disbursements were made, and to which patient the disbursements are to be applied or accounted for.
 - d. If a patient's deposit in the escrow account earns in excess of five dollars during a twelve-month period, the interest must be paid or credited to the patient by the end of the period.
 - e. No more than one account is required regardless of the number of prepaid plans maintained by the chiropractor.
 - f. Funds may only be transferred out of the escrow account for the following reasons:
 - (1) After services, goods, or appliances have been provided to the patient, and only in the usual and customary amounts specifically related to the services, goods, or appliances provided.
 - (2) To reimburse the patient any amounts owed following a notice by either the patient or the chiropractor to terminate the prepaid plan. Any amounts must be transferred according to the written agreement.
 - (3) Payment to the patient of interest earned when it exceeds five dollars per twelve month period.
 - g. The chiropractor shall cause a reconciliation of the escrow account to be made no less than quarterly, with a copy provided to the patient, and shall retain a copy of the reconciliations and all supporting documents for no less than seven years.
2. Written plan. All prepaid care plans require a written plan, signed by both the chiropractor and the patient, with a copy maintained in the patient's record and a copy provided to the patient, and must include at least the following:
 - a. A list of all services, goods, and appliances which are covered by the plan.
 - b. A list of all fees related to the services described in the plan.

- c. A statement that an accounting can be requested by the patient at any time. This accounting must:
 - (1) Be provided to the patient within five working days of a written or verbal request; and
 - (2) Itemize all fees used to calculate any reimbursement.
 - d. An explanation of the reimbursement policies and formula that are used in returning unused funds to the patient in the event of early termination by either the chiropractor or the patient.
 - e. An explanation of any policy modifying the plan in the event of a injury, such as an auto injury or work-related injury or in the event of extended absence or new illness. These explanations must be separately initialed by the patient.
 - f. A provision that the patient will be notified in writing when the patient's account reaches a zero balance.
 - g. A statement that indicates the chiropractor makes no claim or representation that a particular treatment, procedure, or service, or any combination of treatments, procedures, or services, is guaranteed to result in a particular clinical outcome.
 - h. A statement that the patient has the right to cancel the prepay plan without penalty within three business days of entering into the plan by submitting a written and signed cancellation notice, and upon the chiropractor's receipt of the cancellation notice, the chiropractor shall have seven working days to fully refund any unused funds to the patient. This right of cancellation may not be waived or otherwise surrendered.
3. Early termination. The patient has the right to terminate the prepaid plan at any time; under such circumstances as completing care early, moving, or a new injury or illness. The chiropractor may terminate the prepaid plan at any time, for good and sufficient cause, except the chiropractor must ensure that patient abandonment does not occur.
 - a. In event of early termination of a prepaid plan by the patient, the maximum fee charged cannot exceed the chiropractor's usual and customary fee for services rendered.
 - b. In event of early termination of a prepaid plan by the chiropractor, any cost reduction for the package of services must be prorated when determining the amount of repayment.
 - c. In event of early termination of a prepaid plan, the fee for the unused portion must be returned with no penalty.
 4. Prepaid plans must be compliant with all applicable state and federal laws.
 5. When providing care as a part of a prepaid plan a chiropractor shall provide competent, necessary care in a timely and professional manner. All care recommended and rendered must be clinically justified and appropriately documented.
 6. A prepaid plan is not health insurance and does not meet the Affordable Care Act "individual mandate" requirements for health insurance coverage.
 7. The regulations in this section do not release a chiropractor from any contractual obligations that the chiropractor has with an insurer or other entity. A chiropractor who is contracted with an insurance carrier shall adhere to the terms of their provider contract in regards to the collection of copayments, co-insurances, and applied deductibles. A chiropractor may not bill a

reimbursement entity or a patient for any amount exceeding what is earned and distributed to the chiropractor.

8. Failure to abide with the requirements of this section is unprofessional conduct.

History: Effective January 1, 2016.

General Authority: NDCC 28-32-02, 43-06-04(1) & (6), 43-06-04.1.

Law Implemented: NDCC 43-06-04(6)(a) & (g), 43-06-15(1)(e).