

**ARTICLE 114-03
DISCIPLINARY ACTION**

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**CHAPTER 114-03-01
DISCIPLINARY PROCESS**

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114-03-01-01. Definitions.

The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-62 and apply to title 114 unless the context indicates otherwise.

1. "Acts or omissions" means patterns of unsafe behavior, practice deficits, failure to comply with acceptable standards of practice, or grounds for discipline identified in North Dakota Century Code chapter 43-62 or this title.
2. "Cease and desist" means an order directing a licensee or applicant, or any other individuals to halt purportedly unlawful activity ("cease") and not take it up again later ("desist").
3. "Denial" means the board's refusal to issue or renew a current license.
4. "Incompetence" means conduct that deviates from scope of practice approved by the board.
5. "Impaired" means the ability to practice safely has been affected by the use or abuse of alcohol or other drugs, psychiatric or physical disorders, or practice deficiencies.
6. "Letter of censure" means a formal action against a licensee or applicant whose practice does not meet the acceptable standards of practice.
7. "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-62, or this title, which indicates an applicant or licensee continuing to practice poses a high risk of harm to the patient.
8. "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-62, or this title, which indicates an applicant or licensee's continuing to practice poses a low risk of harm to the patient.
9. "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, taking, or wrongful, temporary, or permanent use of a patient's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.

10. "Neglect" means a disregard for and departure from the standards of care which has or could have resulted in harm to the patient.
11. "Practice deficiency" means a practice activity that does not meet the standards of medical imaging and radiation therapy practice.
12. "Probation" means restrictions, requirements, or limitations placed against a licensee through monitoring for a prescribed period of time.
13. "Professional boundaries" means the provision of services within the limits of one of the modalities and patient relationship which promote the patient's dignity, independence, and best interests, and refrain from inappropriate involvement in the patient's or patient's family personal relationships.
14. "Professional-boundary violation" means a failure of a licensee to maintain appropriate boundaries with a patient, patient family member, or other health care provider.
15. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
16. "Relicensure" means renewal, reinstatement, or reissuance of a license or registration.
17. "Revocation" means the withdrawal by the board of the licensee's right to practice for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.
18. "Suspension" means withholding by the board of the license of the right to practice medical imaging and radiation therapy for a specified or indefinite period of time.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-09

114-03-01-02. Applicant statement.

1. If an applicant for initial or renewal of licensure has been arrested, charged, or convicted of a misdemeanor or felony offense, an applicant shall provide the necessary information for the board to determine the bearing upon that person's ability to perform as a licensed medical imaging and radiation therapy professional.
2. Upon receipt of evidence of sufficient rehabilitation as outlined in North Dakota Century Code section 12.1-33-02.1, the board may issue a license.
3. If the board believes the information does not substantiate sufficient rehabilitation, the applicant may request a hearing pursuant to North Dakota Century Code chapter 28-32.

History: Effective April 1, 2018.

General Authority: NDCC 12.1-33-02.1, 43-62

Law Implemented: NDCC 43-62-09(12), 43-62-19(15)

114-03-01-03. Reporting violations.

Licensees, applicants, or citizens may use the following process to report any knowledge of acts or omissions by an individual that may violate North Dakota Century Code chapter 43-62 or this title:

1. Minor incident:

- a. If the act or omission meets the criteria for management of a minor incident, the applicant or licensee, should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.
 - b. 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 exhibits evidence of remediation and adherence to standards of practice; and
 - (4) The corrective action process results in the licensee possessing the knowledge, skills, and abilities to practice safely.
 - c. Other factors may be considered in determining the need to report the incident, 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 system.
 - d. 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 which indicate a duty to report the licensee or applicant, the licensee's or applicant's supervisor or employer shall 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 or applicant terminates from the practice setting, either voluntarily or by request, due to conduct that may be grounds for discipline under the medical imaging and radiation therapy practices act or this title, a report must be made to the board by the licensee or applicant, and may be reported by the employer or supervisor in the manner and form provided by the board.
 4. Self-reporting. A licensee 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 this or any other jurisdiction, or a certification organization, or any other action taken against the licensee or applicant for any conduct that may affect patient safety or otherwise relates adversely to the practice of medical imaging and radiation therapy. This includes failure to complete applicable continuing education requirements or other applicable certification organization requirements for maintenance of the licensee's or applicant's registration and certification.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-09(7)(8), 43-62-19(15)

114-03-01-04. Investigations.

Complaints, requests for investigation, and reports of acts or omissions that are in violation of North Dakota Century Code chapter 43-62, or this title, must be investigated by the board or by its direction 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 protected health information that is obtained by the board is an exempt record as defined in North Dakota Century Code section 44-04-17.1.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-09(7), 43-62-11, 43-62-19(15)

114-03-01-05. Evidence and evaluation of treatment.

1. 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 or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs.
2. The board may require a copy of the evaluation to be submitted from the evaluating professional directly to the board.
 - a. Upon failure of the licensee or applicant to submit to the evaluation within thirty days of the request, the board may suspend the licensee's license or deny or suspend consideration of any pending application until the licensee or applicant submits to the required evaluation.
 - b. The licensee or applicant shall bear the cost of any mental health, chemical dependency, or physical evaluation and treatment required by the board.
 - c. The board may suspend or revoke an individual's license if it is determined the individual is unsafe to practice. The suspension or revocation remains in effect until the individual demonstrates to the satisfaction of the board the ability to safely return to the practice.
 - d. The board may deny the individual's application for licensure if it is determined the individual is unsafe to practice. The denial remains in effect until the individual demonstrates to the satisfaction of the board the ability to safely practice.
3. Any protected health information that is obtained by the board is an exempt record as defined in North Dakota Century Code section 44-04-17.1.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-09(13), 43-62-11, 43-62-19(3)(4)

114-03-01-06. Disposition.

1. Investigation may result in one of the following:
 - a. Informal resolution and disposition by the board.
 - b. Formal resolution and disposition by the board:
 - (1) 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
 - (2) 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.
2. Dismissal. If the board's investigative panel determines 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 must be notified in writing that the board will not pursue the matter, stating the grounds for the decision;

3. Referral to another agency; or
4. Other action as directed by the board.

History: Effective April 1, 2018.

General Authority: NDCC 28-32, 43-62

Law Implemented: NDCC 43-62-09, 43-62-18, 43-62-19(7), 43-62-20

114-03-01-07. Cease and desist order.

When it appears by credible evidence that a cease and desist order is necessary, the president of the board or the authorized designee, after consultation with the office of the attorney general, may issue an order directing a licensee, applicant, or any other individual practicing medical imaging and radiation therapy in violation of North Dakota Century Code chapter 43-62, or this title, to cease and desist certain actions.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-09(14)

114-03-01-08. Board decision.

The final decision must be adopted by a majority of a quorum of the board and must include findings of fact, conclusions of law, and an order. The decision of the board to impose or modify any restrictions upon the licensee or the licensee's practice or to reinstate a license must be communicated to the licensee in the form of a board order. If a licensee is authorized to practice in more than one modality of medical imaging and radiation therapy, the board order applies to all modalities. In addition to the terms and conditions imposed by the board, the following may apply:

1. Revocation of license. If the board issues a revocation order, the board also may prescribe the specific actions necessary for the relicensure of the individual. The certification process may be waived by the board as a condition for the relicensure of a previously revoked license. The initial licensure fee must be assessed for the relicensure of a revoked license. The time frame of revocation must be set in the order of the revocation or if not set it will be five years from the date of the board order.
2. Suspension of license. If the board issues a suspension order, the board also may prescribe the length of suspension and specific actions necessary for the relicensure of the individual. An individual whose license is suspended may request relicensure by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current renewal fee must be required for relicensure of a suspended license.
3. Probation. If the board issues a probation order, the board may prescribe the length of probation and specific actions necessary for successful completion of the probation. The license must be designated in the board's records as "probation" or as the board may otherwise require. If a licensee is authorized to practice in more than one modality of medical imaging and radiation therapy, the probation applies to all modalities.
4. Denial. If the board issues an order to refuse to issue or renew a current license for cause, the board also may prescribe the specific action necessary for the issuance or the reissuance of the license.
5. Letter of censure. The board may issue a letter of censure as formal action against an applicant or licensee whose practice does not meet the acceptable standards of practice.

6. Imposition of a penalty. The board may levy a penalty against an individual who has knowingly practiced medical imaging or radiation therapy without proper authorization or who has jeopardized public health, safety, or welfare.
7. Conditional dismissal. The board may impose terms and conditions for the individual to meet and upon compliance the complaint will be dismissed.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-18

114-03-01-09. Application for relicensure.

1. An individual whose license has been suspended or revoked by the board may:
 - a. Request a written application for relicensure in the manner and form required by the board at the conclusion of the time period specified in the order;
 - b. Pay the nonrefundable reinstatement fee and an application fee as required in chapter 114-01-03 for an application for relicensure of a suspended or revoked license. The burden of proof is on the licensee 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; and
 - c. Schedule an appearance for the next board meeting if received at least thirty days prior.
2. The board may:
 - a. Consider the written application for relicensure at the next regularly scheduled board meeting.
 - b. Schedule a vote for relicensure.
 - c. Impose reasonable terms and conditions to be imposed prior to relicensure, or as a condition of relicensure. If the board denies relicensure, reasons for denial must be communicated to the applicant.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 43-62-09, 43-62-18

114-03-01-10. Practice without a current license.

1. An individual who performs medical imaging or radiation therapy without proper authorization by the board is practicing without a license. The board may issue a cease and desist order, obtain a court order or injunction, or seek civil or criminal action or fines to halt the unlicensed practice, a violation of North Dakota Century Code chapter 43-62, or a violation of this title.
2. On or between January second and March first of the first year of the current license cycle, an individual seeking to renew a license who has failed to complete the licensure process within the required time period and has been found to have been practicing unintentionally without a current license is required to:
 - a. Submit a completed application and the nonrefundable fees as required in chapter 114-01-03; and
 - b. Complete all other licensure requirements as established by the board.

3. After March first of the first year of the current license cycle, an individual seeking to renew a license who has failed to complete the licensure process within the required time period and has been found to have been practicing unintentionally without a current license is required to:
 - a. Submit a completed application and the nonrefundable fees as required in chapter 114-01-03;
 - b. Complete a criminal history record check; and
 - c. Complete all other licensure requirements as established by the board.
4. The license of an individual who has failed to renew the license and unintentionally practiced without proper authorization is not authorized to practice until meeting all board requirements for licensure. The license remains lapsed until the board receives satisfactory evidence of successful completion of the requirements for licensure.
5. The licensee, who has a lapsed license and has been found to be intentionally practicing without a license, must be referred to the appropriate organization for investigation and possible prosecution.

History: Effective April 1, 2018.

General Authority: NDCC 43-62

Law Implemented: NDCC 12-60-24, 43-62-09, 43-62-21