

ARTICLE 50-01.1
DEFINITIONS

Chapter
50-01.1-01 Grounds for Discipline - Definitions

CHAPTER 50-01.1-01
GROUND FOR DISCIPLINE – DEFINITIONS

Section
50-01.1-01-01 Grounds for Discipline-Definitions

50-01.1-01-01. Grounds for Discipline – Definitions.

The following definitions apply to grounds for discipline for licenses under the jurisdiction of the board.

1. "Chaperone" means a third person who, with the patient's consent, is present during a medical examination.

2. "Conduct" includes, but is not limited to the following:
 - a. Behaviors, gestures, or expressions, whether verbal or physical; or

 - b. The creation, receipt, exchange, saving, or sending of images or communications, whether verbal or written, via a telecommunications device.

3. "Former patient" means one of the following:
 - a. A person for whom the licensee has not rendered health care services since the licensee-patient relationship was terminated; or

 - b. A person who has otherwise been admitted, discharged, or referred to another licensee for care subsequent to receipt of health care services by a licensee in an emergency setting or on an episodic basis, and such action has been recorded in the person's medical record or chart.

4. "Health care services" means examination, consultation, health care, treatment, or other services provided by a licensee under the legal authority conferred by a license, certificate, or registration issued by the board.

5. "Intimate examination" means an examination of the pelvic area, genitals, rectum, breast, or prostate.

6. "Key third party" means an individual closely involved in the patient's decision-making regarding health care services, including but not limited to, the patient's spouse or partner, parents, child, sibling, or guardian. For purposes of this section, an individual's status as a key third party ceases upon the termination of the licensee-patient relationship or upon termination of the individual's relationship with the patient.
7. "Licensee" means any professional licensed issued under the jurisdiction of the board of medicine.
8. "Patient" means a person for whom the licensee has provided health care services, whether provided by mutual consent or implied consent, or provided without consent pursuant to a court order. Once a licensee-patient relationship is established, a person remains a patient until the relationship is terminated. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the licensee and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor. Patient includes any of the following:
 - a. A person who is receiving or has received health care services from the licensee without termination of the licensee-patient relationship; or
 - b. A person who meets the criteria of a key third party, as that term is defined in this section.
9. "Sexual abuse, misconduct, or exploitation" means conduct that exploits the licensee-patient relationship in a sexual way, whether verbal or physical, and may include the expression of thoughts, feelings, or gestures that are sexual or that reasonably may be construed by a patient as sexual. This includes current patients or a key third party. Sexual impropriety, sexual contact, or sexual interaction include:
 - a. "Sexual Impropriety" means conduct by the licensee that is seductive, sexually suggestive, disrespectful of patient privacy, or sexually demeaning to a patient, including but not limited to, the following:
 - i. Neglecting to employ disrobing or draping practices respecting the patient's privacy;

- ii. Subjecting a patient to an intimate examination in the presence of a third party, other than a chaperone, without the patient's consent or in the event such consent has been withdrawn;
 - iii. Making comments that are not clinically relevant about or to the patient, including but not limited to, making sexual comments about a patient's body or underclothing; making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation, or making comments about potential sexual performance;
 - iv. Soliciting a date or romantic relationship with a patient;
 - v. Participation by the licensee in conversation regarding the sexual problems, sexual preferences, or sexual fantasies of the licensee;
 - vi. Requesting details of the patient's sexual history, sexual problems, sexual preferences, or sexual fantasies when not clinically indicated for the type of health care services; and
 - vii. Failing to offer the patient the opportunity to have a third person or chaperone in the examining room during an intimate examination and/or failing to provide a third person or chaperone in the examining room during an intimate examination upon the request of the patient.
- b. "Sexual contact" includes, but is not limited to, the following:
- i. Touching a breast, genital, or any body part that has sexual connotation for the licensee or patient, for any purpose other than appropriate health care services, or where the patient has refused or has withdrawn consent; and
 - ii. Examining or touching of the patient's genitals without the use of gloves.
- c. "Sexual interaction" means conduct between a licensee and patient, whether or not initiated by, consented to, or participated in by a patient, that is sexual or may be reasonably interpreted as sexual, including but not limited to, the following:
- i. Sexual intercourse or genital to genital contact;
 - ii. Oral to genital contact;

- iii. Oral to anal contact or genital to anal contact;
 - iv. Kissing in a romantic or sexual manner;
 - v. Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present;
 - vi. Offering to provide health care services, such as drugs, in exchange for sexual favors; and
 - vii. Performing an intimate examination without clinical justification.
 - viii. Conduct that is sexually demeaning to a patient or which demonstrates a lack of respect for the patient's privacy.
- d. Conduct described in sections (9)(a)(i), (9)(a)(ii), (9)(a)(vii), and (9)(b)(i) of this rule does not constitute sexual misconduct when all of the following criteria are met:
- i. The conduct occurred during the rendering of health care services in an emergency setting;
 - ii. The health care services rendered were clinically necessary;
 - iii. The patient was unconscious or otherwise unable to consent to health care services; and
 - iv. The patient's clinical condition required immediate action and the licensee's violation of the provisions of sections (9)(a)(i), (9)(a)(ii), (9)(a)(vii), or (9)(b)(i) of this rule, as applicable, was due to circumstances not within the licensee's control.
- e. This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
10. "Unethical conduct" means conduct contrary to the following codes of ethics for each licensed profession:
- a. For medical doctors, the 2016 code of medical ethics adopted by the American medical association;

- b. For osteopathic doctors, the 2016 code of ethics adopted by the American osteopathic association;
- c. For physician assistants, the 2018 guidelines for ethical conduct for the physician associates profession adopted by the American academy of physician associates;
- d. For genetic counselors, the 2017 code of ethics adopted by the national society of genetic counselors; and
- e. For naturopaths, the 2015 code of ethics adopted by the American association of naturopathic physicians.
- f. It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

History: Effective _____.

General Authority: NDCC 43-17-07.1(10), 43-58-03.1, and 43-60-06

Law Implemented: 43-17-02.1(1), 43-17-02.5, 43-17-31(1), 43-58-11(2)(o), and 43-60-07(1)(o)

CHAPTER 50-02-15 TELEMEDICINE

Section

50-02-15-01 Definitions

50-02-15-02 Prescribing

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50-02-15-01. Definitions.

As used in this chapter:

1. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. It includes direct interactive patient encounters as well as asynchronous store-and-forward technologies and remote monitoring.
2. "Licensee" means a physician or physician assistant licensed to practice in North Dakota. A physician assistant practicing telemedicine from another state is subject to the rules regarding physician collaboration, except that collaboration must be by a North Dakota licensed physician who is practicing telemedicine in North Dakota and need not be by a North Dakota licensed physician who is physically located in North Dakota.

History: Effective January 1, 2018; amended effective October 1, 2022.

General Authority: NDCC 43-17-01(6)

Law Implemented: NDCC 43-17-01, 43-17-44

50-02-15-02. Prescribing.

A licensee who has performed a telemedicine examination or evaluation meeting the requirements of this chapter may prescribe medications according to the licensee's professional discretion and judgment. Opioids may only be prescribed through telemedicine if done so as a federal food and drug administration-approved medication-assisted treatment for opioid use disorder. Opioids may not be prescribed through a telemedicine encounter for any other purpose.

Licensees who prescribe controlled substances, as defined by North Dakota law, in circumstances allowed under this rule, must comply with all state and federal laws regarding the prescribing of controlled substances, and must participate in the North Dakota prescription drug monitoring program.

History: Effective January 1, 2018.

General Authority: NDCC 43-17-45

Law Implemented: NDCC 19-02.1-15.1, 19-03.1-22.4, 19-03.5-09, 43-17-45

50-02-15-03. Exceptions

A physician who is a holder of an active, unrestricted license in good standing to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada, may practice medicine or osteopathy in this state via telehealth without first obtaining a license from the North Dakota board of medicine if one of the following apply:

1. Continuation of care received outside of North Dakota. A physician who has established a patient-provider relationship in another state with a patient who is a resident of North Dakota may provide continued care to the patient via telehealth without a obtaining a North Dakota physician license subject to the following:
 - a. The provider-patient relationship must have been established at an in-person encounter in a state in which the physician is licensed;
 - b. Subsequent care may be provided to the patient via telehealth while the patient is in North Dakota if the care is logical and expected continuation of care provided in an in-person encounter in the state where the physician is licensed. If the patient is presenting with new medical conditions, or conditions that the standard of care dictates an in-person encounter is needed, patient must either return to the state in which the physician is licensed for care or must be referred to a North Dakota – licensed health care provider; and
 - c. The telehealth care may continue for up to one (1) year after establishment of the provider-patient relationship in another state, after which an in-person encounter must take place in a jurisdiction where the physician is licensed before the telehealth may resume for another one (1) year.
2. Temporary care. A physician who has an established patient-provider relationship with a person who is in North Dakota temporary for business, work, education, vacation or other reasons and such person requires health care services from that primary provider.
3. Preparation. Provides health care services in preparation for a scheduled in-person care visit.
4. Practitioner-to-Practitioner Consultation. A practitioner licensed in another state may consult using telemedicine or other means with a North Dakota licensed practitioner who has and remains responsible for the diagnosis and treatment of the patient within the state and requests the consultation.
5. Emergency. Gratuitous service rendered in the case of an emergency.

By engaging in virtual care with a patient located in North Dakota, a provider exempted from North Dakota licensure under this section consents to the applicable North Dakota laws, rules, and regulations governing the provider's profession, including this title and the North Dakota community standard of care, the jurisdiction of the board, including the board's disciplinary process.

History: Effective _____.

General Authority: NDCC 43-17-02.4(5)

Law Implemented: NDCC 43-17-02.3(5)

**ARTICLE 50-03
PHYSICIAN ASSISTANTS**

50-03-01-02. Licensure requirements.

Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant satisfies all of the requirements for licensure, including:

1. Satisfactory proof of graduation from a physician assistant program for physician assistants accredited by the accreditation review commission on education for physician assistant or other entity as approved by the board;
2. Successful passage of the certifying examination of the national commission on certification of physician assistants or other certifying examinations approved by the North Dakota board of medicine. The physician assistant must maintain certification with the national commission on certification of physician assistants or other certifying entity approved by the board during the entire period of licensure;
3. Payment of the fee as required by section 50-03-01-13;
4. Submission to a statewide and nationwide criminal history record check pursuant to subsection 4 of North Dakota Century Code section 43-17-07.1; and
5. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction, of the commission of any act that would constitute grounds for disciplinary action.

History: Amended effective July 1, 1988; November 1, 1993; January 1, 2020; October 1, 2022; April 1, 2024, _____.

General Authority: NDCC 43-17-02.1

Law Implemented: NDCC 43-17-02.1

Article 50-07
Genetic Counselors

Chapter
50-07-01 Genetic Counselors

CHAPTER 50-07-01
GENETIC COUNSELORS

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50-07-01-01. Definitions.

Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-60 are applicable to this article. In this article, unless the context or subject matter otherwise requires:

1. “ABGC” means the American board of genetic counseling.
2. “ABMG” means the American board of medical genetics.’
3. “Board” means the North Dakota board of medicine.

History: Effective
General Authority: NDCC 43-60-06
Law Implemented: NDCC 43-60-06, 43-60-01

50-07-01-02. License issued.

When it is determined by the board that any candidate has successfully completed all requirements by law and rule for licensure, a license shall be issued.

An officer of the board and the board’s executive director or deputy executive director may issue a provisional temporary license to an applicant who is seeking a permanent North Dakota genetic counselor license if in their judgement the applicant

meets all the requirements for a license. A provisional temporary license is valid from the date of issue until the time of the next regularly scheduled meeting of the board.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-03. Location of practice – license displayed.

Each licensed genetic counselor shall maintain a permanent electronic mail or mailing address with the board to which all communications from the board to the licensee will be sent. A licensee who changes an address shall notify the board in writing of the new contact information within thirty days. A current certificate or duplicate certificate issued by the board must at all times be displayed in each office location of the genetic counselor.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-04. Fees.

The fee for initial licensure of a genetic counselor is fifty dollars per year. The renewal fee is fifty dollars per year. The fee for license verification is thirty dollars.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-05. Renewal.

A genetic counselor seeking to renew the license who has failed to complete the annual registration process within three years from the expiration date must be assessed a fee of \$100, in addition to such other penalties as are authorized by law, if that genetic counselor is found to have been practicing in this state after the genetic counselor's license expired. A genetic counselor may renew the expired license upon payment of fifty dollars per year, up to three years, for each year past the renewal deadline. A genetic counselor whose license lapsed more than three years before the genetic counselor petitions the board for reinstatement shall submit a new application for licensure.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-06. Reporting requirements.

A genetic counselor is subject to the mandatory reporting requirements specified in North Dakota Century Code section 43-17.1-05.1. In addition to the requirements imposed under North Dakota Century Code section 43-17.1-05.1, the genetic counselor must report to the board within ten days if the individual no longer holds a valid certification from the ABGC. Upon verification that the genetic counselor no longer holds the certification, the license automatically expires. The expiration of the genetic counselor license under this section does not preclude the board from taking disciplinary action.

History: Effective _____

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-07. Disciplinary action.

The board is authorized to take disciplinary action against a licensed genetic counselor in accordance with North Dakota Century Code chapter 43-17.1 on the grounds set forth by North Dakota Century Code 43-60-07, by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the duties of a genetic counselor.
5. Letter of censure.
6. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the board must be deposited in the state general fund.

History: Effective _____

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06, 43-60-07

50-07-01-08. Disciplinary proceedings.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a genetic counselor, the board may direct any genetic counselor to pay the board a sum not to exceed the

reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels of the board in the investigation and prosecution of the case. If applicable, the genetic counselor's license may be suspended until the costs are paid to the board. A genetic counselor may challenge the reasonableness of any cost item in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-9. Administrative Sanction.

An administrative sanction shall be imposed in the amount of \$250 for any applicant or licensed genetic counselor who provides false or deceptive information with regard to any material fact concerning eligibility for initial licensure or renewal after verifying or certifying that the information provided is true. This includes all material information provided in an initial license application or renewal.

The imposition of the administrative sanction under this section is not 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 licensed genetic counselor may challenge the imposition of an administrative sanction under this section under North Dakota Century Code chapter 28-32.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06

50-07-01-10. Notice of denial or limitation of licensure.

In the event the board makes a determination that an applicant does not meet the requirements for licensure, the board shall promptly give the applicant notice, personally or by certified mail, that it has made an informal decision to deny the application or to place conditions or limitations on the applicant's license. The board shall also advise the applicant as follows:

1. The applicant has the right to have the merits of the application considered at a formal hearing in accordance with the provisions of the North Dakota Administrative Agencies Practices Act, North Dakota Century Code chapter 28-32.

2. To secure a formal hearing on the merits of the application, the applicant must contact the board to request the hearing within thirty days of being given notice of the board's informal decision.

In the event an applicant does not request a formal hearing within thirty days of the date on which the applicant is given notice that the board has made an informal decision to deny the application or to place conditions or limitations on the applicant's license, then the board's informal decision will become the final order of the board.

History: Effective

General Authority: NDCC 43-60-06

Law Implemented: NDCC 43-60-06