



NORTH DAKOTA BOARD OF NURSING

Explanation of Board Compliance Process

1. When the Board receives a complaint against a nurse (APRN, RN, or LPN) or registrant (UAP, MAIII), it is provided to Compliance Division staff for processing. It is Compliance Division staff's ("our") goal to investigate the complaint and bring it to a final disposition.
2. Our first step is to redact the contact information of the complainant and send a copy of the complaint to the licensee/registrant who is the subject of the complaint ("Respondent"). The Respondent is asked to submit a written response to the complaint within ten (10) days.
3. We then proceed with our investigation by obtaining pertinent information, which may include patient medical records, Respondent's human resource records, and facility investigation records and policies.
4. We then complete telephone interviews with the complainant, the Respondent's employer, any witnesses, and any other persons who can assist us in gathering information about the case. Lastly, we complete a telephone interview with the Respondent.
5. Once we have gathered all the information through our investigation, we present the case to the Board's Compliance Advisory Council ("CAC") which meets monthly. The CAC is made up of the Board's Executive Director, Board Legal Counsel, the Associate Director for Compliance, the Associate Director for Practice, the Administrative Services and Licensing Director, and the Education Division Coordinator. The CAC may also invite a practice expert or a current or former Board member to participate in a CAC meeting.
6. The Board has delegated to the CAC the authority to review cases and propose disciplinary action recommendations to the Board.
7. Some of the possible recommendations that can be made by the CAC include, but are not limited to:
 - a. **Non-disciplinary actions** (these actions will not show up on the Respondent's record):
 - i. **Dismissal:** if the CAC determines that there is no violation of the Nurse Practices Act (codified in North Dakota Century Code, Chapter 43-12.1) or the corresponding rules for nursing (found in North Dakota Administrative Code, Title 54), the complaint will be dismissed. This is finalized at the CAC level.
 - ii. **Letter of Concern:** when the actions or behavior of the Respondent may not rise to the level of a violation of the law or rules but are still concerning to the CAC, a letter of concern may be issued by the CAC. The letter describes the concerns of the CAC, imposes an administrative fee, and often includes a requirement for the Respondent to complete continuing education coursework. Once the fee is paid and the coursework is completed, the case is closed. This action is also finalized at the CAC level.
 - b. **Disciplinary Sanctions** [once finalized by the Board, these actions are reported as disciplinary action on the Board's website/database, the NURSIS database, and the National Practitioner Databank ("NPDB")]

- i. **Reprimand:** a reprimand is a one-time disciplinary action that does not place restrictions on the Respondent's license/registration. A reprimand states there was a violation of the law and rules, and that the Respondent must refrain from such behavior in the future. A reprimand imposes a penalty fee and often includes a requirement for the Respondent to complete continuing education coursework.
- ii. **Encumbrance:** an encumbrance includes specific terms and conditions of probation that the Respondent must comply with over a designated period. An encumbrance imposes a penalty fee, and often includes a requirement for the Respondent to complete continuing education coursework.
- iii. **Suspension:** with a suspension, the Respondent's license/registration is suspended for a specific period and a penalty fee is imposed.

If disciplinary sanctions are recommended by the CAC, Board Legal Counsel will draw up a proposed legal document called a Stipulation for Settlement. The proposed Stipulation for Settlement is provided to the Respondent for review. If the Respondent agrees with the terms of the proposed Stipulation for Settlement, the Respondent must sign the document in the presence of a notary and return the original document to the Board office. The signed and notarized Stipulation for Settlement will then be presented to the Board at its next meeting for final approval. Once the Stipulation for Settlement is approved, a final copy will be mailed and emailed to the Respondent.

If the Respondent disagrees with some of the terms or conditions of the proposed Stipulation for Settlement, there may be a period of negotiation between the Respondent and the CAC, during which time a revised Stipulation for Settlement may be agreed upon.

If the Respondent and CAC are unable to agree upon a Stipulation for Settlement, or if the Respondent stops cooperating with the CAC, then the CAC may proceed with the Administrative Hearing Process (see below).

- c. **Surrender:** A Respondent may elect to surrender their license/registration to the Board. A surrender shall be deemed to be an admission of the alleged facts in the complaint. The surrender of a license/ registration is disciplinary action and shall be reported and processed in the same manner as final disciplinary actions of the Board. The Executive Director may accept a surrender without formal charges, notice, or opportunity for hearing if the Respondent surrenders their license/registration to the Board and executes a statement that the Respondent does not desire to be licensed or registered. A Respondent who surrenders their license/registration is not eligible to seek reinstatement of their license/registration for a minimum of two years.
- d. **Emergency Actions:** the Board has delegated the ability to sign emergency orders to the Board's Executive Director. Emergency actions are utilized when the CAC believes there is an imminent threat to the public welfare if the Respondent continues their current practice.
 - i. **Emergency Suspension:** An Order of Emergency Suspension shall take effect upon written notice to the Respondent and shall remain in effect until it is retracted, modified, or superseded by final disciplinary action by the

Board or upon agreement between the board and the Respondent. If a hearing is not requested by the Respondent within twenty days of the notice, the Order of Emergency Suspension shall become effective as a final order, for a suspension period of five years, without further notice.

- ii. **Cease and Desist Order:** When it appears by credible evidence that a Cease and Desist Order may be necessary, the Board's Executive Director or the Executive Director's authorized designee may issue a Cease and Desist Order directing the Respondent to cease and desist certain actions.
- iii. **Notice of Suspension:** if a Respondent fails to comply with their Board order or fails to comply with a required chemical dependency evaluation, mental health evaluation, or physical evaluation, the Board may suspend their license/registration until certain conditions are met.

- e. **Administrative Hearing:** If the CAC determines that disciplinary action is warranted, but is unable to agree upon a Stipulation for Settlement with the Respondent, then the CAC may initiate a formal hearing or court proceeding before an Administrative Law Judge ("ALJ"). The CAC will send the Respondent a formal Notice and Complaint, either through their attorney or by sheriff's service. The Board will then ask the Office of Administrative Hearings to appoint an ALJ. At the conclusion of the ALJ Hearing, the ALJ will provide the Board with recommended Findings of Fact, Conclusions of Law, and Order. This information is then brought back to the Board at its next meeting for final action.

While the Board, CAC, and Board staff cannot and will not provide legal advice to any Respondent, it is within the Respondent's right to retain an attorney at any time during the investigation and hearing process. The retained attorney must contact Compliance Division staff or Board Legal Counsel to notify the Board they have been retained. Communication then will proceed between Board Legal Counsel and/or Compliance Division staff and the Respondent's attorney.

If the Respondent is not licensed in North Dakota but holds a privilege to practice nursing in North Dakota based on their multistate license in a different Nurse Licensure Compact state, the process is the same; however, any disciplinary action that is recommended will be against the Respondent's privilege to practice nursing in North Dakota.

While the investigation is open, the investigative case file may be exempt from an open record request; however, once the complaint has come to a final disposition and is closed, then the entire case file is subject to open record laws (North Dakota Century Code, Section 44-04-17.1). Investigative case files are kept by the Board for one year after the final disposition and then are destroyed pursuant to the North Dakota Record Retention requirements.