CHAPTER 61-04-04
UNPROFESSIONAL CONDUCT

Section
61-04-04-01 Definition of Unprofessional Conduct

61-04-04-01. Definition of unprofessional conduct.

The definition of "unprofessional conduct" for purposes of subdivision i of subsection 1 of North Dakota Century Code section 43-15-10 for disciplinary purposes includes, but is not limited to, the following:

1. The violating or attempting to violate, directly, indirectly, through actions of another, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of North Dakota Century Code chapter 43-15, the Prescription Drug Marketing Act, the Robinson-Patman Act, or of the applicable federal and state laws and rules governing pharmacies or pharmacists.

2. Failure to establish and maintain effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by state or federal laws or rules.

3. Making or filing a report or record which a pharmacist or pharmacy 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 pharmacist or pharmacy is required to make or file in the capacity as a licensed pharmacist or pharmacy.

4. Being unable to practice pharmacy 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. A pharmacist affected under this subsection shall at reasonable intervals be afforded an opportunity to demonstrate that the pharmacist can resume the competent practice of pharmacy with reasonable skill and safety to the pharmacist's customers.

5. Knowingly dispensed a prescription drug after the death of a patient.

6. Using a facsimile machine to circumvent documentation, authenticity, verification, or other standards of pharmacy practice.

7. Billing or charging for quantities greater than delivered, or for a brand when a generic is dispensed.

8. Submits fraudulent billing or reports to a third-party payor of prescription charges.

9. Refuses to provide information or answer questions when requested to do so by the patient, which affect the patient's use of medications prescribed and dispensed by the pharmacy.

10. Does not address or attempt to resolve and document a possible prescription error or situation of potential harm to the patient when apparent or should have been apparent to the pharmacist.

11. Does not attempt to affect the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that patient may be so dependent or addicted.

12. The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated.

13. The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy.

14. Refusing to compound and dispense prescriptions that may reasonably be expected to be compounded or dispensed in pharmacies by a pharmacist.

15. Participation in agreements or arrangements with any person, corporation, partnership, association, firm, or others involving rebates, kickbacks, fee-splitting, or special charges in exchange for professional pharmaceutical services, including, but not limited to, 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 licensed health care facility or the owner, operator, or administrator of a licensed health care facility as compensation or inducement for placement of business with that pharmacy or pharmacist. Monetary rebates or discounts which are returned to the actual purchaser of drugs as a cost-justified discount or to meet competition are permitted if the rebates of discounts conform with other existing state and federal rules and regulations.

16. Discriminating in any manner between patients or groups of patients for reasons of religion, race, creed, color, sex, age, or national origin.

17. Disclosing to others the nature of professional pharmaceutical services rendered to a patient without the patient's authorization or by order or direction of a court or as otherwise permitted by law. This does not prevent pharmacies from providing information copies of prescriptions to other pharmacies or to the person to whom the prescription was issued and does not prevent pharmacists from providing drug therapy information to physicians for their patients.

18. Improper advertising. Prescription drug price information may be provided to the public by a pharmacy, if all the following conditions are met: No representation or suggestion concerning the drug's safety, effectiveness, or indications for use, is made. No reference is made to controlled substances listed in schedules II-V of the latest revision of the Federal Controlled Substances Act, North Dakota Uniform Controlled Substances Act, and the rules of the state board of pharmacy.

19. Failure to report to the prescription drug monitoring program as required by North Dakota Century Code chapter 19-03.5.

20. Failure to comply with the reporting requirement of North Dakota Century Code section 43-15-42.3, including:

    a. Actions that affect the licensee's or registrant's practice privileges in a facility.

    b. Actions that result in the loss of the licensee's or registrant's employment or membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment.

    c. Actions based on a professional liability claim against the licensee or registrant, such as an adverse judgment or settlement, a refusal to issue or renew coverage, or a cancellation of coverage.

    d. Actions resulting in the loss of the licensee's or registrant's authorization to practice by any state or jurisdiction.

    e. Conviction of the licensee or registrant of any misdemeanor or felony in this or any other state, territory, or jurisdiction.

21. Notwithstanding any other provision, a practitioner who diagnoses a sexually transmitted disease, such as chlamydia, gonorrhea, or any other sexually transmitted infection, in an

individual patient may prescribe or dispense, and a pharmacist may dispense, prescription antibiotic drugs to that patient's sexual partner or partners, without there having been an examination of that patient's sexual partner or partners.

Interpretation of this definition of unprofessional conduct is not intended to hinder or impede the innovative practice of pharmacy, the ability of the pharmacist to compound, alter, or prepare medications, subsequent to a practitioner's order for the appropriate treatment of patients. Further, it is not intended to restrict the exercise of professional judgment of the pharmacist when practicing in the best interest of the pharmacist's patient.

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