

COMPLAINT PROCEDURES

The following process outlines the steps taken by the NDBCE when a complaint is registered against a licensed counselor in the State of North Dakota. However, there may be times when the Board must be flexible and modify the process in order to be responsive to the needs of a particular case. The following explanation of the complaint process is for informational purposes. For a detailed review of the complaint process and the administrative hearing process, consult N.D.C.C. Ch. 28-32, N.D.C.C. Ch. 43-47 and N.D. Admin. Code Title 98.

- Step 1: When an individual contacts the Board office with a complaint against a licensed counselor, the individual is informed that a formal complaint must be filed before the Board can take action. If the individual is willing to sign the complaint the forms are mailed at that time. If the individual is unwilling to sign a complaint and wishes to remain anonymous the complainant **MUST** contact the board. A Board member will be assigned and may then decide, with concurrence of the Board, to file the formal complaint, if the complaint is justified. (At this point, the Board member becomes the complainant). If it is found that the individual is not a licensed counselor, the Board has no jurisdiction, and the individual with the complaint is informed that he/she should refer the matter to the State's Attorney or other appropriate licensing agency.
- Step 2: Once the formal Complaint form is signed by a concerned person or Board member and returned to the Board office, the actual complaint process begins. The Board office will file the original complaint. The Board office date stamps the complaint form showing the date it was received. The Board office then notifies the counselor of the complaint and requests a written response from the counselor. A copy of the counselor's written response will be sent to the complainant. **[NOTE: Neither the initial complaint nor the counselor's response is a public record. The term "complaint" means the complaint form and accompanying documents. The term "response" means the written response and attachments. Although not a public record, under North Dakota law the Board has discretion to release the complaint or response.]**
- Step 3: The Board chairperson is empowered to assign the complaint to a member of the Board for a preliminary investigation to determine whether or not grounds for a complaint actually exist. The board member will then contact both parties to the complaint, if necessary, in an effort to gather as much information as possible prior to the next Board meeting. The Board member will then make a recommendation to the Board as to whether or not grounds for the complaint actually exist. When feasible, a copy of the complaint, response, and information obtained in the investigation will be provided to all Board

members prior to the Board meeting where the complaint is addressed.
[NOTE: Patient records acquired by the Board in its investigation are confidential and closed to the public. It is the responsibility of the party providing patient records to the Board to clearly identify the documents as patient records so the Board knows the records are to be kept confidential.]

- Step 4: If the Board determines that there is inadequate information to clearly identify the grounds for further action by the Board, that the information available demonstrates that no violation of the code of ethics has occurred, or that the Board has no legal jurisdiction in the matter, the complaint is dismissed and the complainant and the counselor will be so informed in writing.
- Step 5: If the investigation reveals grounds to support the complaint, the Board, through legal counsel, shall attempt to informally resolve the complaint or initiate disciplinary action.
- Step 6: The disciplinary action is initiated by serving upon the licensee, by certified mail, a complaint setting forth the allegations upon which the action is based, as well as the specification of the issues to be considered and determined. After an answer to the complaint is received, the Board will file a request with the Office of Administrative Hearings that an Administrative Law Judge be assigned to conduct a hearing and provide recommended findings of fact, conclusions of law and order.
- Step 7: The Board and the counselor may informally resolve the complaint at any time prior to a final decision.
- Step 8: Hearing. The hearing will be presided over by the administrative law judge and conducted pursuant to N.D.C.C. Ch. 28-32. Both parties have a right to representation by counsel and to call witnesses in their behalf. At the hearing, both parties have the opportunity to present evidence and to examine and cross-examine witnesses as permitted under 28-32-06. Witnesses may be subpoenaed to attend and testify at the hearing. At the hearing, all witnesses will be put under oath and testimony will be recorded.

Within 30 days after the administrative law judge issues his recommendations, or as soon thereafter as possible, the Board shall make and state its findings of fact, conclusions of law, and order.

The Board's decision may be to dismiss the case, revoke or suspend the counselors' license, place the license on probation, issue a letter of reprimand, or deny re-licensure.

Any party may appeal the decision of the board within 30 days after written notice thereof has been given. Such appeal may be taken to the district court designated by law. Notice of appeal must be served upon the Board, the attorney general or an assistant attorney general, and all the parties concerned. The matter then follows the procedures of District Court.

At any time during these proceedings the Board may decide the counselor named in the complaint may be in violation of criminal or civil law and may refer the case to the appropriate prosecutor for further action.

- Step 9 If the Board disciplines a licensee, either through a settlement agreement or after a hearing, the Board will notify the American Association of State Counseling Board's Disciplinary Information Network by providing it a copy of the settlement agreement or the Board's findings of fact, conclusions of law, and order.

(05-09-25)

PARTY MAKING THE COMPLAINT:

Name:_____ Phone:_____ Work:_____

Address:_____ City State Zip (code email optional)

PARTY AGAINST WHOM THE COMPLAINT IS MADE:

Name:_____ Credential (LPC,LPC or LAPC)

Address:_____ City State Zip code

Place of Employment : _____

Address:_____ City State Zip code

NATURE OF THE COMPLAINT: List each incident, setting forth specific date(s), full name(s) of all alleged participants, and a brief statement describing each incident. If additional space is required, attach a sheet to the back of this form.

I hereby certify that the above-stated charges are true and correct to the best of my knowledge. I further certify that the Board of Counselor Examiners is hereby authorized to copy and release this complaint as may be required by law or for the proper resolution of this matter.

Date:_____ Signed:_____

NDCC Chapter 43-47-08 provides that the Board of Counselor Examiners shall notify the counselor of the complaint and require a written response from the counselor. NDCC chapter 43-47-05 further provides the counselor's response must be made available to the complainant. Pursuant to NDCC chapter 43-47-08, neither the initial complaint nor the counselor's response is public record.