

NORTH DAKOTA BOARD OF DIETETIC PRACTICE

Complaint Procedure

- I. Intake Process:
 1. Receipt of Complaint:
 - a. All complaints should be directed to the Board's Executive Secretary, no matter the form of communication used.
 - i. If a complainant sends a written (paper or e-mail) complaint to a Board member, the Board member shall forward the complaint to the Executive Secretary. The Executive Secretary shall acknowledge its receipt to the complainant on behalf of the Board.
 - ii. If a complainant communicates by other means, such as in person, by phone, or by text messaging, directly to a Board member, the Board member shall instruct the complainant to contact the Executive Secretary, and may provide the Complainant with contact information. THE BOARD MEMBER MUST NOT DISCUSS THE MERITS OF THE COMPLAINT. If the Board member is viewed as having "investigated" the complaint, the Board member may be disqualified from considering and deciding the merits of the complaint.
 2. The Executive Secretary shall copy the complaint if in writing, print it if by email, or take down the pertinent information if there is a direct contact.
 - a. Pertinent information should include, as a minimum, the name of the person complained about and a short direct statement of the complaint. The name and contact information for the complainant should be obtained if possible in order to investigate the matter.
 - b. The complaint and any information gathered are not confidential. Any information gathered may be forwarded to the person complained against so that he or she may make a response. Also, the open records law requires such information to be available to the public, including the news media, on request.
 3. The Executive Secretary shall forward the complaint to the Assistant Attorney General assigned as general counsel to the Board.
 4. The general counsel AAG will review the complaint:
 - a. First, the complaint shall be reviewed to determine whether it states a legal issue that comes under the Board's jurisdiction.
 - i. The AAG may contact the complainant to gather further information if the issue is unclear.
 - ii. Once the complaint is clear:
 1. If the matter involves a crime or an issue which is under the jurisdiction of a different governmental agency or private entity, the AAG may refer the complainant to the proper authorities.
 2. If the complaint does not involve a matter under the Board's jurisdiction, the AAG shall communicate this opinion to the Board for review at its next meeting.
 - b. If the complaint involves a matter under the Board's jurisdiction, the AAG will send a letter to the person complained of, stating the Board's receipt of the complaint, the precise legal issues involved, and will request a response or explanation. A copy of the complaint, if available, shall be attached to assist in the response.
 5. The complaint, any response, and the AAG's evaluation shall be provided to the Board for its consideration at a regular or special meeting.
- II. Determination of Probable Cause to Proceed:
 1. The Board shall consider the complaint and the results of any investigation.
 - a. If the Board determines that this matter does not fall under its jurisdiction, the complaint shall be dismissed by motion. The AAG shall communicate this fact to the interested parties in writing.

- b. If the Board determines that further information is required, the matter shall be remanded to the AAG for further investigation.
 - 2. If the Board determines that the complaint and any other information shows probable cause to proceed to an administrative hearing:
 - a. The matter shall be referred for litigation under the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. This must be by motion.
 - b. The general counsel AAG shall provide all pertinent information to an AAG assigned to the case from the Civil Litigation Division of the Office of the Attorney General.

III. Litigation

- 1. If the matter is referred for litigation, the Chairperson shall request appointment of an Administrative Law Judge from the Office of Administrative Hearings to hear the matter.
 - a. Unless there are special circumstances, the ALJ shall be requested to issue recommended findings and a recommended order instead of a final decision.
 - b. In the event of special circumstances which would require the Board to decline to determine the matter, the Board shall request the ALJ to issue a final determination on the merits.
 - c. The general counsel AAG will assist the Chairperson in this determination.
- 2. After the ALJ returns findings and the order:
 - a. The Board shall review the ALJ's findings at a regular or special meeting with its general counsel AAG as soon as practicable but in any case no later than 30 days after receiving the findings and order from the ALJ.
 - b. If the ALJ's findings and order are recommended only, the Board must decide by motion whether to modify the findings and order, in whole or in part, and issue its own findings and order.
 - i. If the findings and order are not modified, they become the Board's final order 30 days after they were issued by the ALJ.
 - ii. If modified, the general counsel will work with the Board to develop the Board's findings and order, and shall inform the parties.
 - c. If the ALJ's findings and order are final, the Board must decide by motion whether to appeal the decision.
- 3. If the defendant or Board appeals to district court, the matter returns to the litigation counsel AAG.
 - a. The district court may remand the matter to the Board, or issue a decision. In which event, the Board shall consult with its general counsel AAG.
 - b. The Board may choose to accept or appeal an adverse district court decision.
 - c. If the Board chooses to appeal the district court's decision to the Supreme Court, the appeal must be made within 60 days from service of the entry of judgment or order of the district court.