

Revised October 4, 2019

## **Duty to Report FAQs**

### **Q: What does North Carolina’s “Duty to Report” law (G.S. 90-5.4) require of licensees?**

A: The law requires licensees to report, within 30 days, to the Board incidents involving the following misconduct by a licensee of the North Carolina Medical Board:

1. Sexual misconduct with a patient.
2. Fraudulent prescribing, drug diversion or theft of controlled substances.

### **Q: How sure does the medical professional making the report to the Board need to be that misconduct has occurred before submitting his or her report?**

A: The law states that the medical professional reporting misconduct is obligated to make a report to NCMB if he or she “reasonably believes” that the reported misconduct has occurred.

### **Q: What does “reasonably believes” mean?**

A: The law does not define this. “Belief” or “believes” denotes that the reporting licensee actually supposes their report to be true. There is no requirement of certainty, and the belief may be inferred from circumstances. The belief is “reasonable” if an ordinary, prudent licensee could arrive at the same belief, presented with the same circumstances.

### **Q: How does the law define “sexual misconduct” with a patient?**

A: For the purposes of the Duty to Report requirement pursuant to G.S. 90-5.4, sexual misconduct is defined in G.S. 14-27.20(4), (5), (6) as “sexual acts,” “sexual contact” or “touching.” For a complete definition of those terms, see:

[www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_14/GS\\_14-27.20.pdf](http://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-27.20.pdf)

Please note that, under the law, patient consent or patient initiation of sexual contact does not relieve a licensee of the duty to report sexual misconduct.

Also, consistent with NCMB’s position statement, [Sexual exploitation of patients](#), there are other matters a licensee should report that are not covered by G.S. 90-5.4.

**Q: What is “fraudulent prescribing, drug diversion or theft of controlled substances?”**

A: G.S. 90-5.4(a)(2) requires licensees to report other licensees for “fraudulent prescribing, drug diversion, or theft of controlled substances.” Drug diversion is specifically defined by the statute as transferring controlled substances or prescriptions for controlled substances to:

- (i) the licensee for his own personal use;
- (ii) a licensee’s immediate family member;
- (iii) any other person living in the same residence as the licensee;
- (iv) any individual with whom the licensee is having a sexual relationship; or
- (v) any individual unless for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.

Immediate family members will include a spouse, parent, child, sibling, any step-family member or in-law coextensive with the preceding identified relatives.

Fraudulent prescribing is not specifically defined and will overlap with drug diversion, but it is a prescription that is written for the purpose of obtaining a controlled substance for an illicit use. Examples include selling prescriptions, writing prescriptions in exchange for sexual favors, writing prescriptions for fictitious patients, or forging prescriptions on another licensee’s prescription pad.

Theft of controlled substances will include stealing any controlled substances from patients, clinics, practices, pharmacies, hospitals or other healthcare facility. It will also include stealing prescription samples or drugs intended for disposal in drug take back programs.

**Q: What information will a medical professional submitting a report be expected to include when reporting a matter to the Board?**

A: NCMB requires certain essential facts to conduct an investigation, regardless of the subject of the case. The individual making the report will be expected to provide the name of the licensee who engaged in misconduct, a description of what is alleged or believed to have occurred, date or dates of occurrences, if known, and the name of the patient or patients involved, if known. Individuals submitting reports may attached photos, documents or any other files they believe will help the Board to investigate the reported misconduct.

**Q: How will medical professionals report suspected misconduct to the Board?**

A: NCMB has established an online form specifically for medical professionals who have information to report to the Board. Going forward, medical professionals who wish to report a matter of concern to NCMB will use this portal and NOT the consumer/patient complaint form. A dedicated reporting form is something medical professionals have requested of NCMB for some time. Access the portal from the home page of [www.ncmedboard.org](http://www.ncmedboard.org) by clicking on the button labeled “File a complaint/report” at the center left of the page. Then, select the health professional reporting form from the list of options.

**Q: May I report a matter to the Board without sharing my name?**

A: The Board accepts “anonymous” reports in that it can typically investigate a case without revealing the name of the person who submitted the report to the licensee who is being investigated. The online form requires the name and contact information of the person making the report. This will confirm the person has discharged his/her duties under the statute.

In cases where the Board determines that it will pursue public action against a licensee, it may not be possible for the individual who originally reported the misconduct to remain anonymous. The Board generally must have contact information for an individual reporting a concern so that he or she can be reached if NCMB has questions or requires further information.

**Q: Can a licensee fulfill their responsibility to report suspected misconduct by their institution making the report on their behalf?**

A: Yes. The institution should use the same form a medical professional would use to report information to the Board.

**Q: What is my liability if I make a report in good faith but the allegations are found to be unsubstantiated at the conclusion of the Board’s investigation?**

A: Any person who reports under the new Duty to Report law (G.S. 90-5.4) in good faith and without fraud or malice shall be immune from civil liability. Reports made in bad faith, fraudulently, or maliciously shall constitute unprofessional conduct and shall be grounds for discipline under G.S.90-14(a)(6).

For all other reports to the Board, G.S. 90-14(f) provides, in relevant part, that a person acting in good faith without fraud or malice shall be immune from civil liability for reporting to the Board the acts of a licensee that violate the Medical Practice Act.

**Q: What if a health professional wishes to report a concern that is not related to sexual misconduct or to inappropriate prescribing, drug diversion or theft of controlled substances?**

A: Health care professionals are welcome to use the health professionals reporting form to make NCMB aware of any misconduct or substandard practice by a licensee. The Duty to Report statute is simply what prompted NCMB to establish this new portal. Note: Hospitals that need to report a change in staff privileges or insurance carriers that need to report professional liability payments made on behalf of licensees should continue to use established methods for reporting this information to the Board.

**Q: What will the Board do with the information that is reported?**

A: Any report made to the Board will be thoroughly evaluated through standard investigative methods. Our investigative brochure can be found here:

[https://www.ncmedboard.org/images/uploads/publications\\_uploads/Investigations\\_brochure.pdf](https://www.ncmedboard.org/images/uploads/publications_uploads/Investigations_brochure.pdf)