§ 90-5.4. Duty to report.

(a) Every licensee has a duty to report in writing to the Board within 30 days any incidents that licensee reasonably believes to have occurred involving any of the following:

(1) Sexual misconduct of any person licensed by the Board under this Article with a patient. Patient consent or initiation of acts or contact by a patient shall not constitute affirmative defenses to sexual misconduct. For purposes of this section, the term "sexual misconduct" means vaginal intercourse, or any sexual act or sexual contact or touching as described in G.S. 14-27.20. Sexual misconduct shall not include any act or contact that is for an accepted medical purpose.

(2) Fraudulent prescribing, drug diversion, or theft of any controlled substances by another person licensed by the Board under this Article. For purposes of this section, "drug diversion" means transferring controlled substances or prescriptions for controlled substances to (i) the licensee for personal use; (ii) a licensee's immediate family member; (iii) any other person living in the same residence as the licensee; (iv) any person 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. For the purposes of this section, the term "immediate family member" means a spouse, parent, child, sibling, and any step-family member or in-law coextensive with the preceding identified relatives.

(b) For persons issued a license to practice by the Board under this Article, failure to report under this section shall constitute unprofessional conduct and shall be grounds for discipline under G.S. 90-14(a)(6). However, persons licensed by the Board who are employed by or serving as a director or agent of the North Carolina Physicians Health Program and who obtain information exclusively while functioning in their role as employee, director, or agent of the North Carolina Physicians Health Program that causes them reasonably to believe that incidents referred to in subdivisions (1) and (2) of subsection (a) of this section occurred shall not be required to report pursuant to this section but shall comply with the reporting provisions contained in G.S. 90-21.22.

(c) Any person who reports under this section 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).

(d) The Board may adopt rules to implement this section. (2019-191, s. 8.)