

## **CHAPTER 43-13 OPTOMETRISTS**

### **43-13-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota state board of optometry.
2. "Diagnosis and treatment" means the determination, interpretation, and treatment of any visual, muscular, neurological, or anatomical anomaly of the eye which may be aided, relieved, or corrected through visual training procedures or through the use of lenses, prisms, filters, ophthalmic instruments, pharmaceutical agents, or combinations thereof, held either in contact with the eye, or in frames or mountings, as further authorized by this chapter. Laser therapy and the use of invasive surgery are not permitted under this chapter, except superficial foreign bodies may be removed and primary care procedures may be performed.
3. "Optometry" means a primary health care profession whose practitioners are engaged in the evaluation of disorders of the human eye and the examination, diagnosis, and treatment thereof, together with its appendages.
4. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic pharmaceutical agents. The term includes nonscheduled pharmaceutical agents, except for acetaminophen with thirty milligrams of codeine, that have documented use in the treatment of ocular-related disorders or diseases. As used in this subsection:
  - a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered for the evaluation and diagnosis of disorders of the human eye including anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains, and pharmaceutical agents to evaluate abnormal pupil responses.
  - b. "Therapeutic pharmaceutical agents" includes topically administered and prescribed pharmaceutical agents for treatment of ocular-related disorders or disease, locally administered pharmaceutical agents for primary eye care procedures, oral anti-infective agents, oral antihistaminic agents, and oral analgesics for the treatment of ocular-related disorders or diseases.
5. "Practicing optometry" means:
  - a. Displaying a sign or in any way advertising as an optometrist.
  - b. Employing any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof.
  - c. Engaging in any manner in the practice of optometry.

### **43-13-02. Persons exempt from provisions of chapter.**

The provisions of this chapter do not apply to the following persons:

1. Persons who sell spectacles, eyeglasses, or other articles of merchandise without attempting to practice optometry.
2. Student interns who are currently enrolled in an optometry school or college accredited by the accreditation council on optometric education of the American optometric association, or its successor agency, or who have graduated no more than three months prior, and are under the immediate and direct supervision of a licensed optometrist.
3. Physicians and surgeons licensed under chapter 43-17.

### **43-13-03. North Dakota state board of optometry - Members - Appointment - Qualifications - Terms of office - Oath - Vacancies.**

The North Dakota state board of optometry consists of seven members appointed by the governor for a term of five years each, with their terms of office so arranged that at least one term expires on June thirtieth of each year. Five of the members of the board must be resident licensed optometrists who have an established optometric practice in this state and are engaged in the actual practice of optometry in this state. Each member of the board shall qualify by taking the oath required of civil officers and filing the same with the secretary of the board. A

member of the board shall hold office until a successor is appointed and qualified. A vacancy on the board must be filled by appointment by the governor for the remainder of the unexpired term.

**43-13-04. Officers of board - Election - Term of office - Duty of president.**

The members of the board shall elect from among their own number a president and a secretary. Such officers shall hold office for the term of one year, and until their successors are elected and qualified. The president of the board shall preside at all meetings of the board and shall sign on behalf of the members all licenses or other instruments issued by the board. Such licenses or instruments must be attested by the secretary.

**43-13-05. Secretary of board - Duties - Record - Custodian of fees - Report.**

The secretary of the board, or the secretary's designee, has the following duties:

1. Keep a full record of the proceedings of the board.
2. Be custodian of all fees coming into the possession of the board.
3. At such times as may be required by the board, furnish a complete statement of receipts and disbursements under oath, together with vouchers, receipts, and such other evidence of the receipts and disbursements as may be required by the board.

**43-13-06. Secretary of board - Bond.**

The secretary of the board, or the secretary's designee in the event the duties have been delegated to another, must be bonded for the faithful discharge of duties in such amount as may be prescribed by the board.

**43-13-07. Compensation and expenses of board members.**

A member of the board shall receive as compensation for each day the member actually is engaged in performing the duties of office a per diem as established by the board, mileage and travel expenses as are provided for in section 54-06-09, and additional allowance for other necessary expenses incurred in attending said meeting not to exceed five dollars per day. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

**43-13-08. Secretary of board - Compensation.**

The secretary of the board shall receive for clerical expenses and other expenses of the board an allowance, and a salary or other compensation, as the board shall determine.

**43-13-09. Biennial report.**

The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

**43-13-10. Meetings of board - Quorum - What constitutes.**

The board shall meet at least once in each year at a place it designates, and in addition thereto whenever and wherever the president and the secretary, for proper cause, call a meeting. Four members of the board in actual attendance at any meeting constitute a quorum for the transaction of business.

**43-13-11. Records of board.**

The record of the proceedings of the board kept by the secretary, or the secretary's designee, at all reasonable times must be open to public inspection. The record also must contain a registry list of all persons licensed by the board, together with renewals and revocations of licenses. The record constitutes the official registry of all persons licensed to practice optometry in this state.

#### **43-13-12. Records of board as evidence.**

A true copy of all records of the board, or any part thereof, is admissible in evidence without further proof of authenticity when accompanied by the certificate of the secretary of the board that the same is a true copy of the original record on file in the office of the secretary of the board.

#### **43-13-13. Duties of board.**

The board has the following duties:

1. To enforce the provisions and carry out the purposes of this chapter.
2. To make and enforce such rules and regulations consistent with law as may be necessary for the proper performance of its duties; the effective enforcement of this chapter; the reasonable regulation of the profession of optometry and the practice thereof by persons licensed under this chapter; and to protect the health, welfare, and safety of the citizens of this state.
3. To proceed in the courts of this state by injunction when considered necessary to restrain any violation of this chapter.

#### **43-13-13.1. Board may authorize use of ocular diagnostic pharmaceutical agents - Training required for certification - Board may adopt rules.**

Repealed by S.L. 1987, ch. 517, § 3.

#### **43-13-13.2. Practice of optometry - Certification requirements - Notification.**

1. Any person engaged in visual training procedures or who employs or prescribes lenses, prisms, filters, ophthalmic instruments, or combinations thereof, held either in contact with the eye, or in frames or mounting, to aid, relieve, or correct any visual or ocular anomaly, or holds out as being able to do so, is deemed to be engaged in the practice of optometry.
2. Before any optometrist may prescribe and administer pharmaceutical agents in the treatment and management of ocular diseases, the optometrist must first be certified or qualify for certification in the use of diagnostic pharmaceutical agents. For additional certification to prescribe and administer pharmaceutical agents in the treatment and management of ocular disease, the board shall require at least seventy-six hours of didactic instruction and twenty-four hours of clinical application of pharmaceutical agents for the treatment and management of ocular diseases. The course for therapeutic certification must be provided by an institution accredited by a regional or professional accrediting organization that is recognized and approved by the United States department of education or the council on postsecondary accreditation.
3. An optometrist may not dispense therapeutic pharmaceutical agents, except an optometrist may:
  - a. Provide a patient a drug sample at no cost to the patient; or
  - b. Sell contact lenses or ophthalmic devices that are classified by the federal food and drug administration as a drug.
4. The board shall provide the board of pharmacy upon request a list of licensed optometrists certified in the use of pharmaceutical agents.

#### **43-13-13.3. Standard of care - When consultation with physician required.**

1. An optometrist certified by the board in the use of pharmaceutical agents as provided in this chapter must be held to the same standard of care in the use of such agents as are physicians licensed by the North Dakota board of medicine.
2. Any optometrist authorized by the board to use pharmaceutical agents shall consult with a physician duly licensed to practice medicine when any diseased or pathological conditions of the eye do not respond to treatment. The consultation must be documented in the patient's record.

**43-13-14. Members of board to administer oaths - Seal of board.**

Any member of the board, upon being duly designated by the board, or a majority thereof, may administer oaths or take testimony concerning any matter within the jurisdiction of the board. The board may adopt a seal.

**43-13-15. Unlawful to practice without license - Sale of glasses - Regulations.**

No person may practice optometry in this state unless the person first obtains a license and complies with the requirements of this chapter. Eyeglasses, spectacles, and lenses may be vended as merchandise only:

1. To dealers.
2. From permanently located and established places of business in this state.

Any licensed optometrist, however, may fit and vend eyeglasses, spectacles, and lenses at any place in this state. Notwithstanding any other provision of law, it is unlawful for any person, or any entity other than a licensed optometrist or a licensed physician to dispense, fit, or prescribe to the public contact lenses, or any medical appliance having direct contact with the cornea of the eye.

**43-13-16. Examination required - When given.**

Before any person is granted a license to practice optometry in this state, the person must pass an examination required by the board. The examination may be conducted at such times and places as are prescribed by the board.

**43-13-17. Application for licensure - Contents - Educational requirements - Fee.**

Any person desiring to take the examination for or to secure a license to practice optometry in this state shall file with the secretary of the board a written application in the form prescribed by the board. An application for admission by examination must be filed at least fifteen days before the date of the examination. The applicant also shall furnish satisfactory proof that the applicant:

1. Is at least eighteen years of age;
2. Is a person of good moral character; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education.

The applicant shall pay to the secretary of the board a registration fee of a reasonable sum fixed by the board.

**43-13-18. Licensure by endorsement.**

An applicant may secure a license to practice optometry in this state without taking all required examinations as follows:

1. Presentation of a certified copy or an original certificate of registration or license in good standing issued to the applicant by another state where the requirements for license are equivalent to those of this state;
2. Payment of a reasonable sum fixed by the board; and
3. Unless waived by the board, all applicants for licensure by endorsement must:
  - a. Apply for the highest level of therapeutic licensure in this state.
  - b. Be current in the continuing education requirements of their current state of licensure.
  - c. Pass a North Dakota state optometry law examination as required by the board to be given at such times and places as are prescribed by the board.
  - d. Have a minimum of four years of practice, federal service, or teaching experience as a licensed optometrist prior to making application.
  - e. Have not committed any act that would constitute grounds for disciplinary action under this chapter or the rules and regulations of the board.
  - f. Submit to an oral interview before such persons and at a time and place as prescribed by the board.

The board may give or require a practical examination of the applicant if it is deemed necessary.

**43-13-19. License - When issued - Fee - Failure to pass examination - Re-examination.**

Every applicant for a license to practice optometry in this state who successfully passes the required examination shall receive a license and must be licensed upon payment to the secretary of the board of a reasonable sum fixed by the board. If the applicant fails to pass the first examination, within fourteen months thereafter the applicant may have another examination upon the payment of fifty percent of the current application fee. The examination must be given at such time and place as may be designated by the board.

**43-13-20. Term of license - Renewal - Annual license fee - Continuing educational requirements.**

A license to practice optometry in the state may be issued for one year only, but may be renewed by paying to the secretary of the board, during the month of December of each year, the license fee for the following year, by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend the education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend the education programs during a year, which proof must include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend the educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and be a reasonable sum fixed by the board. The board shall adopt reasonable rules that must state the type of optometric educational programs which are approved. The board also shall designate the number of classroom hours which must be attended, which must be a reasonable amount for each three-year period. Any person who does not meet these requirements by January first of the year in which the license fee becomes due and payable is in default and may be reinstated by the board upon the payment of an additional sum reasonably fixed by the board, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. This section does not require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

**43-13-21. License to be displayed.**

Every person to whom a license to practice optometry in this state is issued shall display the same in a conspicuous place in the office where the practice of optometry is conducted.

**43-13-21.1. Disciplinary powers of the board.**

1. In addition to any other disciplinary actions available to the board, the board may take one or more of the following actions against an optometrist who violates the provisions of this chapter or the board's rules:
  - a. Letters of concern.
  - b. Letters of censure.
  - c. Reprimands.
  - d. Fines, including costs and attorney's fees.
  - e. Stipulations, limitations, and conditions relating to practice such as additional education and counseling.
  - f. Probation.
  - g. Suspension of the license.
  - h. Revocation of the license.
2. The board may require a licensee to be examined on optometric knowledge and skills, if the board has just cause to believe the licensee may be so deficient in knowledge and skills as to jeopardize the health, welfare, and safety of the citizens of this state.
3. The board may require a physical or mental evaluation as provided in section 43-13-26.1 if it has reason to believe the licensee's physical or mental condition may adversely affect the public welfare.

#### **43-13-22. License - When revoked.**

The board may revoke or suspend any license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the holder of the license:

1. Has violated any provisions of this chapter, the rules and regulations of the board, or committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Has sold or distributed any drug legally classified as a controlled substance or as an addictive or dangerous drug;
3. Has been addicted to the excessive use of intoxicating liquor or a controlled substance for at least six months immediately prior to the filing of the charges;
4. Is afflicted with any contagious or infectious disease;
5. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;
6. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than a licensed optometrist, a physician licensed under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.

Any person whose license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that the disability has been removed and upon such conditions as established by the board.

#### **43-13-23. Revocation of license - Notice.**

Before a license to practice optometry in this state may be revoked or suspended, the secretary of the board shall give the holder of the license notice by registered or certified mail to appear before it to answer the charges. The notice must specify the time and place of hearing which must be at least ten days subsequent to the date the notice was mailed. A copy of the charges must be attached to and served upon the holder of the license as a part of the notice.

#### **43-13-24. Revocation of license - Hearing - Procedure - Witnesses - Expenses.**

At the hearing of the charges against the holder of a license to practice optometry in this state, the secretary of the board shall read the charges to the accused, if present, and the accused shall state whether guilty or not guilty thereof. If the accused denies the charges, evidence must be received by the board from competent witnesses under oath as to their truth. The accused may examine the witnesses or have an attorney present, and may produce evidence in the accused's behalf. The board may compel the production of testimony and the attendance of witnesses from any point within the state and may employ an attorney to represent it. All expenses incurred in conducting the hearing must be paid by the secretary on order of the board out of the funds in the board's custody.

#### **43-13-25. Determination of board constitutes revocation of license.**

The board shall review the evidence at the conclusion of the hearing of charges against the holder of a license to practice optometry in the state, and shall enter upon its records a determination as to whether the accused is guilty of one or more of the charges. If the accused is found guilty, the determination as recorded constitutes a revocation or suspension of the license as determined by the board. If the accused fails to appear at the hearing or if the accused pleads guilty to one or more of the charges, the secretary shall enter that fact upon the records of the board. Such record constitutes a determination of guilt and effects the revocation of the license of the accused.

#### **43-13-26. Revocation of license - Appeal.**

Upon the revocation or suspension of any license to practice optometry in this state, the holder, within thirty days, may appeal to the district court of the county within which the accused resides. The appeal must be taken in accordance with chapter 28-32. The secretary of the board shall send the files and a copy of the minutes of the proceedings of the board in said matter to the clerk of the district court to which the appeal is taken, and such minutes and files constitute the record on appeal.

#### **43-13-26.1. Impaired optometrists.**

The board may restrict, suspend, or revoke the license of any licensed optometrist whose mental or physical ability to practice optometry with reasonable skill and safety is impaired.

1. For the purpose of this section, "impairment" means the inability of a licensee to practice optometry with reasonable skill and safety by reason of:
  - a. Mental illness; or
  - b. Physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills.
2. The board may, upon probable cause, require a licensee or applicant to submit to a mental or physical examination by appropriate health care providers designated by the board. The results of the examination are admissible in any hearing before the board, despite any claim of privilege under any contrary rule or statute. Every person who receives a license to practice optometry or who files an application for a license to practice optometry is deemed to have given consent to submit to the admissibility of the results in any hearing before the board. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances deemed to be beyond the licensee's control, the board may enter a final disciplinary order upon proper notice, hearing, and proof of such refusal.
3. If the board finds, after examination and hearing, that a licensee is impaired, it may take one or more of the following actions:
  - a. Direct the licensee to submit to care, counseling, or treatment acceptable to the board; and
  - b. Suspend, limit, or restrict the optometrist's license for the duration of the impairment.
4. Any licensee or applicant who is prohibited from practicing optometry under this section must be afforded an opportunity, at reasonable intervals, to demonstrate to the satisfaction of the board that the licensee or applicant can resume or begin the practice of optometry with reasonable skill and safety. Licensure will not be reinstated without the payment of fifty percent of the current license fee and may be subject to such reasonable restrictions as may be imposed by the board.

#### **43-13-27. Penalty.**

Any person who violates any provision of this chapter is guilty of a class B misdemeanor.

#### **43-13-28. Prohibitions.**

It is unlawful for any person who is not the holder of a license to practice optometry, to engage in the practice of optometry, directly or indirectly, by employing or hiring upon a salary, commission, or other profit-sharing arrangement a licensed optometrist except as permitted by the rules and regulations of the board. The provisions of this section do not apply to a physician licensed under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.

#### **43-13-29. Prohibiting solicitation of sale of optical appliances and visual services by means of advertisement or otherwise.**

Repealed by S.L. 1981, ch. 435, § 26.

**43-13-30. Reports and testimony accepted - Nondiscrimination and freedom of choice of ocular practitioner.**

The testimony and reports of an optometrist licensed to practice in this state must be received by any state, county, municipality, school district, or other public board, body, agency, institution, or official and by any private educational or other institution receiving public funds as qualified evidence with respect to any matter within the scope of the practice of optometry as defined in section 43-13-01; and no such board, body, agency, official, or institution may, in retaining and utilizing the professional services of ocular practitioners, discriminate between licensed practitioners of optometry and physicians or interfere with any individual's right to free choice of ocular practitioner, when such professional services are within the scope of section 43-13-01. Nothing herein in any manner restricts the authority of any such board, body, agency, official, or institution from utilizing the services of a physician for examinations of the eyes or treatment of diseases of the eyes.

Section 43-13-13 applies in actions to correct any violations of this section.

**43-13-31. Discrimination in optometric services prohibited.**

A person may not discriminate between licensed practitioners of optometry and physicians, or interfere with any individual's right to free choice of ocular practitioner, with respect to the providing of professional services within the scope of section 43-13-01. If a health, accident or disability policy or insurance contract, or any other type of benefit or safety program specifically provides for the payment of optometric services within the scope of section 43-13-01, the payment must be made regardless of whether the service is performed by a physician or optometrist.

**43-13-32. Board immunity and privileged communications.**

1. No member of the board, its committees, its employees, or its staff is liable for civil damages or subject to criminal prosecution for any action undertaken or performed within the scope of the functions of the board under this chapter and the rules of the board when acting without malice or gross negligence and in the reasonable belief the action was warranted.
2. Every communication, oral or written, made by or on behalf of any person, institution, agency, or organization to the board or to any person designated by the board to investigate or otherwise hear matters relating to any disciplinary action, whether by way of report, complaint, or testimony, is privileged. No action or proceeding, civil or criminal, is permitted against any such person, institution, agency, or organization by whom or on whose behalf such a communication was made, except upon proof that the communication was made with malice.
3. The protections afforded in this section do not prohibit a respondent or a respondent's legal counsel from exercising the respondent's constitutional right of due process under the law, or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law.