

OCCUPATIONS AND PROFESSIONS

CHAPTER 318

SENATE BILL NO. 2087

(Human Services Committee)
(At the request of the Board of Podiatric Medicine)

AN ACT to amend and reenact sections 43-05-15 and 43-05-16.3 of the North Dakota Century Code, relating to the renewal of licenses and disciplinary investigations of podiatrists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-15 of the North Dakota Century Code is amended and reenacted as follows:

43-05-15. Renewal of license - Fee - Established by board - Failure to pay - Reinstatement.

Each licensed and practicing podiatrist shall pay the annual renewal license fee established by the board. The license fee may be increased in accordance with the number of years licensed and practicing in North Dakota, but may not exceed five hundred dollars. The fee must be paid on or before the renewal date established by the board. The person is entitled to an annual certificate or license upon payment of the fee. If the renewal fee is not paid within six months after the date established by the board, the license of the delinquent licensee must be considered expired and may be revoked and may not be reissued except upon a new application and the payment of the renewal fee established by the board plus ~~twenty-five dollars~~ the late fee established by the board not to exceed two hundred fifty dollars and the costs of any hearing held concerning revocation of a license for nonpayment.

SECTION 2. AMENDMENT. Section 43-05-16.3 of the North Dakota Century Code is amended and reenacted as follows:

43-05-16.3. Subpoena power - Podiatrist cooperation.

1. In investigating a podiatrist under this section, the board may subpoena the podiatrist and medical records relating to the practice of the podiatrist under investigation. The confidentiality of the subpoenaed records under any other law does not affect the validity of the board's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of the board which are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection. Records of the board which are medical records subpoenaed under this subsection are confidential.
2. A podiatrist or applicant for license under this chapter who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by

the board relating to the subject of the investigation and providing copies of patient medical records or other documentation to assist the board in its investigation. The board shall pay for the copies requested. Except in the case of subpoenaed records, if the board does not have written consent from a patient permitting access to the patient's records, the podiatrist or applicant for license shall delete any data in the record that identifies the patient before providing the record to the board.

Approved April 19, 2013
Filed April 19, 2013

CHAPTER 319

SENATE BILL NO. 2051

(Government and Veterans Affairs Committee)
(At the request of the State Board of Chiropractic Examiners)

AN ACT to amend and reenact sections 43-06-08, 43-06-12, and 43-06-13 of the North Dakota Century Code, relating to chiropractic licensure fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-06-08 of the North Dakota Century Code is amended and reenacted as follows:

43-06-08. License required - Application - Examination required - Fee.

No person may practice chiropractic in this state unless that person has a license from the state board of chiropractic examiners. Any person who desires a license shall apply to the board and submit to an examination. Each applicant shall present with the application a diploma from a college of chiropractic accredited by the council on chiropractic education or its successor, or a photocopy of the same, or a certificate from the college stating that the applicant is a student in good standing in the student's last trimester, and proof that the applicant has the required qualifications. The board may allow an applicant to take the examination during the period that the applicant is attending the applicant's last trimester but may not issue a license until the applicant has graduated and has provided the board with a diploma as provided in this section. Before beginning the examination, the applicant shall pay to the secretary-treasurer of the board a fee, to be determined by the board from time to time, of an amount not to exceed ~~two~~five hundred dollars. The examination must be held twice yearly at intervals of approximately six months with date and place to be determined by the board.

SECTION 2. AMENDMENT. Section 43-06-12 of the North Dakota Century Code is amended and reenacted as follows:

43-06-12. Reexamination - Fee.

If an applicant for a license to practice chiropractic fails to pass the examination, the board, within one year after rejection, may permit that person to retake the examination, upon the payment of a fee, to be determined by the board from time to time, of an amount not to exceed ~~two~~five hundred dollars.

SECTION 3. AMENDMENT. Section 43-06-13 of the North Dakota Century Code is amended and reenacted as follows:

43-06-13. Term of license - Renewal - Fee - Requirements.

A license to practice chiropractic in this state is valid for one year only and must be renewed on or before the first day of September of each year. The fee for renewal of a license must be determined by the board but may not exceed ~~two~~five hundred dollars. The board shall establish by rule the number of hours necessary for annual continuing education. Before it issues a renewal license, the board shall require each

applicant who has a license to practice in this state to attend a postgraduate course sponsored by a college of chiropractic, accredited by the council on chiropractic education, or its successor, a health-related seminar sponsored by an equally accredited college or university, a medical seminar qualifying for continuing education credits, or at least a two-day educational program arranged by the North Dakota chiropractic association and approved by the board. A license which has not been renewed, as a result of nonpayment of annual registration fees required by this chapter or as a result of the failure by the licensee to attend the required annual continuing education, may be reinstated upon payment to the board of the amount of renewal fees then in default or by certification that the required continuing education has been completed within sixty days after the expiration of the previous license. In either case, the board may charge an additional administrative fee to be fixed by the board not to exceed four hundred dollars. In addition to the payment of fees, the board, after an investigation, may require a chiropractor whose license has not been renewed to submit to a reexamination as to the applicant's qualifications to practice chiropractic before the applicant is reinstated, if the board in the exercise of its discretion finds and determines that the best interests of the public and the applicant will be served thereby.

Approved March 19, 2013

Filed March 19, 2013

CHAPTER 320

SENATE BILL NO. 2184

(Senators Larsen, Berry, Hogue)
(Representative Heller)

AN ACT to amend and reenact section 43-06-17 of the North Dakota Century Code, relating to chiropractors practicing in hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-06-17 of the North Dakota Century Code is amended and reenacted as follows:

43-06-17. Right of chiropractor to practice in public and private hospitals and institutions.

A licensed chiropractor may practice under the same standards as other health practitioners in any public or private hospital or other institution in this state, when requested so to do by any patient or the guardian of any patient.

Approved March 14, 2013
Filed March 15, 2013

CHAPTER 321

HOUSE BILL NO. 1091

(Human Services Committee)
(At the request of the State Board of Nursing)

AN ACT to amend and reenact sections 43-12.1-02, 43-12.1-03, 43-12.1-05, 43-12.1-06, 43-12.1-08, 43-12.1-09, 43-12.1-09.1, 43-12.1-11, 43-12.1-13, and 43-12.1-14 and subsection 1 of section 43-12.1-17 of the North Dakota Century Code, relating to definitions concerning advanced practice registered nurses, licensed practical nurses, registered nurses, and specialty practice registered nurses, license and registration requirements, composition of the state board of nursing, qualifications of state board of nursing members, duties of the state board of nursing, initial licensure and registration, criminal history record checks, duties of licensees and registrants, disciplinary proceedings, and nursing education programs; and to repeal sections 43-12.1-18 and 43-12.1-20 of the North Dakota Century Code, relating to nursing practice standards and continuing education requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions.

In this chapter, unless the context otherwise requires:

1. "Advanced practice registered nurse" means an individual who holds a current license to practice in this state as an advanced practice registered nurse within one of the roles of certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist, and who functions in one of the population foci as approved by the board.
2. "Board" means the North Dakota board of nursing.
3. "Licensed practical nurse" means an individual who holds a current license to practice in this state as a licensed practical nurse and who practices dependently under the supervision of a registered nurse, specialty practice registered nurse, advanced practice registered nurse, or licensed practitioner.
4. "Nurse" means an individual who is currently licensed as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse.
5. "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. The term includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:

- a. The maintenance of health and prevention of illness.
 - b. ~~Diagnosing~~Assessing and diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of individuals who are ill, injured, or experiencing changes in the normal health processes.
 - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
 - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under the laws of this state.
6. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
 7. "Registered nurse" means an individual who holds a current license to practice in this state as a registered nurse and who practices nursing independently and interdependently through the application of the nursing process.
 8. "Specialty practice registered nurse" means an individual who holds a current license to practice in this state as a specialty practice registered nurse and who has current certification from a national certifying body in a specific area of nursing practice.
 9. "Unlicensed assistive person" means an assistant to the nurse, ~~other than an individual who is registered on the state department of health nurse aide registry; who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a nurse.~~

SECTION 2. AMENDMENT. Section 43-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-03. License or registration required - Title - Abbreviation.

Any person who provides nursing care to a resident of this state must hold a current license or registration issued by the board. It is unlawful for a person to practice nursing, offer to practice nursing, assist in the practice of nursing, or use any title, abbreviation, or designation to indicate that the person is practicing nursing or assisting in the practice of nursing in this state unless that person is currently licensed or registered under this chapter. ~~A currently licensed advanced practice registered nurse or specialty practice registered nurse may use titles approved by the board.~~An advanced practice registered nurse shall use the abbreviation "APRN" and may use the applicable role designation of certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist inclusive of population foci. A currently licensed specialty practice registered nurse shall use the abbreviation "SPRN"; a currently licensed registered nurse shall use the abbreviation "R.N."; a currently licensed practical nurse shall use the abbreviation "L.P.N."; and an unlicensed assistive person with current registration may use the title

identified by the employer. A person may not use the title "nurse" or be referred to as a "nurse" unless the person is currently licensed by the board or exempt under section 43-12.1-04.

SECTION 3. AMENDMENT. Section 43-12.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-05. Board of nursing - Composition - Term of office.

There is a state board of nursing whose members must be appointed by the governor which must consist of five registered nurses, ~~three~~one advanced practice registered nurse, two licensed practical nurses, and one public member. Each board member must be appointed for a term of four years. No appointee may be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. Terms of nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year.

SECTION 4. AMENDMENT. Section 43-12.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-06. Qualifications of board members.

1. Each registered nurse must be an eligible voting resident of this state, possess an unencumbered registered nurse license under this chapter, and be currently engaged in practice as a registered nurse. A majority of the members under this subsection must be actively engaged in practice in a nurse-patient setting.
2. Each licensed practical nurse must be an eligible voting resident of this state, possess an unencumbered practical nurse license under this chapter, and be currently engaged in practice as a licensed practical nurse. A majority of the members under this subsection must be actively engaged in practice in a nurse-patient setting.
3. Each advanced practice registered nurse must be an eligible voting resident of this state, possess an unencumbered advanced practice registered nurse license under this chapter, and be currently engaged in practice as an advanced practice registered nurse.
- ~~3-4.~~ Each public member must be an eligible voting resident of this state and have no employment, professional license, or financial interest with any health care entity.
- ~~4-5.~~ Each member appointed to the board shall maintain the qualifications for appointment for the duration of the appointment. The governor may remove any member of the board for cause upon recommendation of two-thirds of the members of the board.

SECTION 5. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-08. Duties of the board.

1. The board shall regulate the practice of nursing. ~~Regulation of the practice of nursing must ensure that a person may not practice or offer to practice nursing~~

~~or use titles of advanced practice registered nurse, specialty practice registered nurse, registered nurse, licensed practical nurse, or unlicensed assistive person, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter.~~

2. The board shall:

- a. Enforce this chapter.
- b. Adopt and enforce administrative rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing associations~~organizations~~ and other affected parties.
- c. Appoint and employ a registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
- d. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
- e. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
- f. Issue and renew limited licenses or registrations to individuals requiring accommodation to practice nursing or assist in the practice of nursing.
- ~~g. Establish confidential programs for the rehabilitation of nurses with workplace impairments.~~
- ~~h.~~ Establish a nursing student loan program funded by license fees to encourage individuals to enter and advance in the nursing profession.
- ~~i-h.~~ Establish a registry of individuals licensed or registered by the board.
- ~~j-i.~~ Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
- ~~k-j.~~ Conduct and support projects pertaining to nursing education and practice.
- ~~l.~~ Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
- ~~m-k.~~ Adopt and enforce administrative rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.
 - l. License qualified applicants for nurse licensure.
 - m. Register qualified applicants for the unlicensed assistive person registry.
 - n. Adopt and enforce rules for continuing competence of licensees and registrants.

- o. Adopt and enforce rules for nursing practices.
- p. Issue practice statements regarding the interpretation and application of this chapter.

SECTION 6. AMENDMENT. Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09. Initial licensure and registration.

1. The board shall license nurses and register ~~nursing and~~ unlicensed assistive person applicants. The board shall adopt and enforce administrative rules establishing qualifications for initial nursing licensure and unlicensed assistive person registration and for issuing limited licenses and registrations pursuant to subsection 3.
2. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:
 - a. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
 - (1) Submit a completed application and appropriate fee as established by the board.
 - (2) Submit an official transcript ~~showing that verifies~~ completion of ~~an~~ board-approved in-state nursing education program that prepares the graduate for the level of licensure sought; or a ~~board-approved~~ submit an official transcript that verifies completion of an out-of-state nursing education program ~~preparing that is approved by the state board of nursing of the jurisdiction in which the program is headquartered and that prepares the graduate~~ for the level of licensure sought. The board shall adopt rules establishing standards for the approval of out-of-state nursing education programs. ~~These standards for out-of-state programs must include consideration of whether the program is accredited by the national league for nursing accrediting commission, incorporated, or the commission on collegiate nursing education and whether the program meets the requirements of the state in which the program is provided.~~
 - (3) Pass an examination approved by the board.
 - b. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
 - (1) Submit a completed application and appropriate fee as established by the board.
 - (2) Submit an official transcript ~~showing that verifies~~ completion of a nursing education program approved by the state board of nursing of the jurisdiction in which the program is headquartered and preparing the graduate for the level of licensure sought.
 - (3) Submit proof of initial licensure by examination with the examination meeting North Dakota requirements for licensure examinations in effect at the time the applicant qualified for initial licensure.

- (4) Submit evidence of current unencumbered licensure in another state or jurisdiction or meet continued competency requirements as established by the board.
 - (5) Notwithstanding the foregoing requirements of this subdivision, if an applicant for licensure as a licensed practical nurse is not required to meet any additional academic educational requirements for licensure as a licensed practical nurse if the applicant has been licensed in another state as a licensed practical nurse based upon completion of a registered nurse education program and if the applicant has had at least twenty-four months of unencumbered practice as a licensed practical nurse in another state within the five-yearfour-year period immediately preceding the application, then the applicant is not required to meet any additional educational requirements for licensure as a licensed practical nurse.
- c. An applicant for licensure as an advanced practice registered nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.
 - (2) Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board. An advanced practice registered nurse applicant must have a graduate degree with a nursing focus or must have completed the educational requirements in effect when the applicant was initially licensed.
 - (3) Possess or show evidence of application for a current unencumbered registered nurse license.
- d. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007December 31, 2015, may apply for and receive an advanced practice license if that applicant meets the requirements that were in place in this stateeffect at the time the applicant qualified for initial advanced practice licensure in that state.
- e. An applicant for unlicensed assistive person registration shall:
- (1) Submit a completed application and the appropriate fee as established by the board.
 - (2) Provide verification of appropriate training or evidence of certification or evaluation in the performance of basic nursing interventions.
- f. An applicant for licensure as a specialty practice registered nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.

- (2) Submit evidence of appropriate education and current certification in a specialty nursing role by a national nursing organization meeting criteria as established by the board. A specialty practice registered nurse applicant must have the educational preparation and national certification within a defined area of nursing practice.
 - (3) Possess or show evidence of application for a current unencumbered registered nurse license.
3. For good cause shown, the board may issue a limited license or registration to an applicant.

SECTION 7. AMENDMENT. Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09.1. Nursing licensure or registration - Criminal history record checks.

The board ~~may~~shall require each applicant for initial or renewed nursing licensure and registration to submit to a statewide and nationwide criminal history record check. The board may require any licensee or registrant who is renewing a license or registration and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09.

SECTION 8. AMENDMENT. Section 43-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-11. Duties of licensees and registrants.

Each individual licensed or registered by the board shall provide information requested by the board at the time of renewal or reactivation. Each individual licensed or registered by the board shall report to the board any knowledge of the performance ~~by others~~ of those acts or omissions that are violations of this chapter or grounds for disciplinary action as set forth in section 43-12.1-14. Each licensee or registrant shall report to the board any judgment or settlement in a professional or occupational malpractice action to which the licensee or registrant is a party. Any person, other than a licensee or registrant alleged to have violated this chapter, participating in good faith in making a report, assisting in an investigation, or furnishing information to an investigator, is immune from any civil or criminal liability that otherwise may result from reporting required by this section. For the purpose of any civil or criminal proceeding the good faith of any person required to report under this section is presumed.

SECTION 9. AMENDMENT. Section 43-12.1-13 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-13. Disciplinary proceedings.

Disciplinary proceedings under this chapter must be conducted in accordance with chapter 28-32. Fees for each separate violation or the assessment of costs and disbursements, or both, may be imposed against a respondent in addition to any licensure or registration sanctions the board may impose. An appeal from the final decision of the board may be taken to the district court of Burleigh County under chapter 28-32. The board shall furnish to ~~the boards of nursing of other states by means including the data bank of the national council of state boards of nursing, to data banks as required by federal law and to health care agencies of this state, the required state and federal databanks~~ a list of the names and addresses of licensees or registrants individuals who have been disciplined by the board.

SECTION 10. AMENDMENT. Section 43-12.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-14. Grounds for discipline - Penalties.

The board may deny, limit, revoke, encumber, or suspend any license or registration to practice nursing issued by the board or applied for in accordance with this chapter; reprimand, place on probation, or otherwise discipline a licensee, registrant, or applicant; deny admission to licensure or registration examination; ~~provide an alternative to discipline in situations involving impairments of chemical dependency or psychiatric or physical disorders;~~ require evidence of evaluation and treatment; or issue a nondisciplinary letter of concern to a licensee, registrant, or applicant, upon proof that the person:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;
2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license or registration to practice nursing or to assist in the practice of nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise sanctioned;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. Has engaged in a pattern of practice or other behavior that demonstrates professional misconduct;
6. Has diverted or attempted to divert supplies, equipment, drugs, or controlled substances for personal use or unauthorized use;
7. Has practiced nursing or assisted in the practice of nursing in this state without a current license or registration or as otherwise prohibited by this chapter;
8. Has failed to report any violation of this chapter or rules adopted under this chapter; or

9. Has failed to observe and follow the duly adopted standards, policies, directives, and orders of the board, or has violated any other provision of this chapter.

SECTION 11. AMENDMENT. Subsection 1 of section 43-12.1-17 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall adopt and enforce administrative rules establishing standards for ~~in-state~~ nursing education programs leading to initial or advanced licensure. ~~A nursing education program may not be provided in this state unless the board has approved the program.~~In-state programs must be approved by the board. Out-of-state programs must be approved by the state board of nursing of the jurisdiction in which the program is headquartered. The board shall approve, review, and reapprove nursing education programs in this state. The board may not require a statement of intent as part of the approval process under this section.

SECTION 12. REPEAL. Sections 43-12.1-18 and 43-12.1-20 of the North Dakota Century Code are repealed.

Approved April 16, 2013
Filed April 16, 2013

CHAPTER 322

SENATE BILL NO. 2342

(Senator Anderson)
(Representative K. Koppelman)

AN ACT to create and enact sections 43-15.3-10, 43-15.3-11, and 43-15.3-12 of the North Dakota Century Code, relating to wholesale drug distribution; to amend and reenact sections 43-15.3-01, 43-15.3-02, 43-15.3-03, 43-15.3-04, 43-15.3-07, 43-15.3-08, and 43-15.3-09 of the North Dakota Century Code, relating to wholesale drug distribution; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15.3-01 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.
2. "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between the wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor as defined in section 1504 of the Internal Revenue Code [26 U.S.C. 1504], complies with the following:
 - a. The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing the ongoing relationship; and
 - b. The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.
3. "Board" means the state board of pharmacy.
4. "Broker" means a party that mediates between a buyer and a seller the sale or shipment of prescription drugs, medical gases, or medical equipment.
5. "Chain pharmacy warehouse" means a physical location for prescription drugs, medical gases, or medical equipment which acts as a central warehouse and performs intracompany sales or transfers of the drugs, gases, or equipment to a group of chain pharmacies that have the same common ownership and control.

- 5-6. "Colicensed product" means a prescription drug, medical gas, or medical equipment in which two or more parties have the right to engage in the manufacturing or marketing or in the manufacturing and marketing of the drug, gas, or equipment.
7. "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory which:
- a. Is recognized in the United States pharmacopeia or the official national formulary is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals, or is intended to affect the structure or any function of the body of humans or other animals;
 - b. Does not achieve its primary intended purposes through chemical action within or on the body of a human or other animal; and
 - c. Is not dependent upon being metabolized for the achievement of its primary intended purposes.
- 6-8. "Drop shipment" means the sale of a prescription drug, medical gas, or medical equipment to a wholesale distributor by the manufacturer of the prescription drug, medical gas, or medical equipment or to that manufacturer's colicensed product partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor, under the terms of which the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of the prescription drug, medical gas, or medical equipment and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer the drug, gas, or equipment to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug, medical gas, or medical equipment directly from the manufacturer, or that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor.
9. "Durable medical equipment" means medical devices, equipment, or supplies that may be used in a residence, including oxygen and oxygen delivery systems and supplies, ventilators, respiratory disease management devices, continuous positive airway pressure (CPAP) devices, electronic and computerized wheelchairs and seating systems, apnea monitors, transcutaneous medical nerve stimulator (TENS) units, low air cutaneous pressure management devices, sequential compression devices, feeding pumps, home phototherapy devices, infusion delivery devices, distribution of medical gases to end users for human consumption, hospital beds, nebulizers, and other similar equipment as may be determined by the board by rule.
- 7-10. "Facility" means a facility of a wholesale distributor where prescription drugs, medical gases, or medical equipment are stored, handled, repackaged, or offered for sale.
- 8-11. "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs, medical gases, or

devices by manufacturing the drugs, gases, or devices at the person's own facility or by contracting for the manufacturing by others.

- 9-12. "Manufacturer's exclusive distributor" means any person that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and which takes title to that manufacturer's prescription drug, medical gases, or medical equipment but which does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug, medical gas, or medical equipment. The manufacturer's exclusive distributor must be licensed as a wholesale distributor under this chapter, and to be considered part of the normal distribution channel also must be an authorized distributor of record.
13. "Medical device" means a product or equipment used to diagnose a disease or other condition in order to cure, treat, or prevent disease.
14. "Medical equipment" means equipment prescribed or distributed by a practitioner used in the course of treatment of home care.
15. "Medical gas" means any gaseous substance that meets medical purity standards and has application in a medical environment.
- 40-16. "Normal distribution channel" means a chain of custody for a prescription drug which goes, directly or by drop shipment, from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor to:
- a. A pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient;
 - b. A wholesale distributor, to a pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient;
 - c. A wholesale distributor, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intracompany pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient; or
 - d. A chain pharmacy warehouse, to the chain pharmacy warehouse's intracompany pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient.
- 44-17. "Pedigree" means a document or an electronic file containing information that records each distribution of any given prescription drug.
18. "Pharmacy distributor" means any pharmacy or hospital pharmacy licensed in this state which is engaged in the delivery or distribution of prescription drugs, medical gases, or medical equipment to any other pharmacy licensed in this state or to any other person, including a wholesale drug distributor, engaged in the delivery or distribution of prescription drugs, medical gases, or medical equipment and involved in the actual, constructive, or attempted transfer of a drug, gas, or equipment in this state to other than the ultimate consumer.

when the financial value of the drugs, gases, or equipment is equivalent to at least five percent of the total gross sales of the pharmacy distributor.

- 42-19. "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law, including federal regulation, to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 3539(b)].
- 43-20. "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, ~~excluding~~. The term does not include actions completed by the pharmacists responsible for dispensing product to the patient.
- 44-21. "Repackager" means a person ~~wh~~that repackages.
- 45-22. "Third-party logistics provider" means ~~anyone who~~ a person that contracts with a prescription drug, medical gas, or medical equipment manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug, medical gas, or medical equipment or have general responsibility to direct the prescription drug's, medical gas's, or medical equipment's sale or disposition. The third-party logistics provider must be licensed as a wholesale distributor under this chapter and to be considered part of the normal distribution channel must also be an authorized distributor of record.
23. "Trace" means the capability to identify the historical locations, the records of ownership, and the packaging hierarchy for a particular traceable item. "Trace" answers questions such as where has the item been, who previously owned the item, and in what packaging hierarchy did the product exist at various locations.
24. "Track" means the capability to identify the current, and at the time of shipment the intended future, location, ownership, and packaging hierarchy of a traceable item through the supply chain as the traceable item moves between parties. "Track" addresses both forward and reverse logistics operations. "Track" answers questions such as where is the item currently, who is the next intended recipient, and what is the current packaging hierarchy of the item.
25. "Virtual distributor" means a person that arranges for the distribution of a drug or device and which may or may not take actual possession of the drug or device but contracts with others for the distribution, purchase, and sale.
26. "Virtual manufacturer" means a person that owns the new drug application or abbreviated new drug application for a drug or device and which contracts with others for the actual manufacturing of the drug or device.
- 46-27. "Wholesale distribution" means distribution of prescription drugs, medical gases, or medical equipment to persons other than a consumer or patient. The term does not include:
- a. Intracompany sales of prescription drugs, medical gases, or medical equipment, meaning any transaction or transfer between any division,

- subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- b. The sale, purchase, distribution, trade, or transfer of a prescription drug, medical gas, or medical equipment or the offer to sell, purchase, distribute, trade, or transfer a prescription drug, medical gas, or medical equipment for emergency medical reasons.
 - c. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug, gas, or equipment for the hospital's or health care entity's own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations.
 - d. The sale, purchase, or trade of a drug, gas, or equipment or an offer to sell, purchase, or trade a drug, gas, or equipment by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law.
 - e. The sale, purchase, or trade of a drug, gas, or equipment or an offer to sell, purchase, or trade a drug, gas, or equipment among hospitals or other health care entities that are under common control.
 - f. The distribution of prescription drug samples by manufacturers' representatives.
 - d-g. Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with title 21, Code of Federal Regulations, section 203.23.
 - e-h. The sale of minimal quantities of prescription drugs, medical gases, or medical equipment by retail pharmacies to licensed practitioners for office use.
 - f-i. The sale, purchase, or trade of a drug, gas, or equipment; an offer to sell, purchase, or trade a drug, gas, or equipment; or the dispensing of a drug, gas, or equipment pursuant to a prescription.
 - g-j. The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets.
 - h-k. The sale, purchase, distribution, trade, or transfer of a prescription drug, medical gas, or medical equipment from one authorized distributor of record to one additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug, medical gas, or medical equipment and the supplying authorized distributor of record states in writing that the prescription drug, medical gas, or medical equipment being supplied had until that time been exclusively in the normal distribution channel.

i.l. The delivery of, or offer to deliver, a prescription drug, medical gas, or medical equipment by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, medical gases, or medical equipment and the common carrier does not store, warehouse, or take legal ownership of the prescription drug, medical gas, or medical equipment.

j.m. The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs, medical gases, or medical equipment to the original manufacturer or to a third-party returns processor.

17-28. "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs, medical gases, or medical equipment, including, manufacturers; virtual manufacturers; repackagers; own-label distributors; private-label distributors; jobbers; brokers; virtual distributors and warehouses, including manufacturers' and distributors' warehouses; manufacturer's exclusive distributors; authorized distributors of record; drug, gas, or equipment wholesalers or distributors; independent wholesale drug, gas, or equipment traders; specialty wholesale distributors; third-party logistics providers; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the normal distribution channel such wholesale distributor must also be an authorized distributor of record.

SECTION 2. AMENDMENT. Section 43-15.3-02 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-02. Rulemaking authority.

The board shall adopt rules that conform with wholesale drug distributor licensing guidelines adopted by the federal food and drug administration, including rules necessary to carry out the purposes of this chapter, that incorporate and set detailed standards for meeting each of the license prerequisites set forth in this chapter, and that establish reasonable fees to carry out this chapter.

SECTION 3. AMENDMENT. Section 43-15.3-03 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-03. Wholesale drug distributor licensing requirement - Minimum requirements for licensure.

1. A wholesale distributor that engages in the wholesale distribution of prescription drugs, medical gases, or medical equipment shall pay the annual fee required by the board, must be licensed by the board under this chapter, and must be properly licensed in any other state in which the wholesale distributor engages in the distribution of prescription drugs, medical gases, or medical equipment before engaging in wholesale distributions of wholesale prescription drugs, medical gases, or medical equipment in this state. The licensee shall operate in a manner prescribed by law and according to rules adopted by the board. However, information and qualification requirements for licensure beyond that required by federal law or regulation do not apply to manufacturers distributing ~~their~~the manufacturers' own United States food and drug administration-approved drugs, gases, or equipment, unless particular requirements are deemed necessary and appropriate following rulemaking. The board may grant a temporary license when the wholesale distributor or

pharmacy distributor first applies for a license to operate within this state. A temporary license is valid until the board finds that the applicant meets the requirements for regular licensure.

2. A person may not engage in wholesale distributions of prescription drugs without obtaining and maintaining accreditation or certification from the national association of boards of pharmacy's verified accredited wholesale distributor or an accreditation body approved by the board, obtaining and maintaining a license issued by the board, and paying fees as may be required by the board.
3. The board shall require the following minimum information from each wholesale distributor applying to get a license under subsection 1:
 - a. The name, full business address, and telephone number of the licensee.
 - b. All trade or business names used by the licensee.
 - c. Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs.
 - d. The type of ownership or operation.
 - e. The name of every owner and operator of the licensee, including:
 - (1) If an individual, the name of the individual;
 - (2) If a partnership, the name of each partner, and the name of the partnership;
 - (3) If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and
 - (4) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
 - f. A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs, medical gases, or medical equipment.
 - g. The name of the applicant's designated representative for the facility, ~~together with and for a prescription drug wholesaler applicant,~~ the personal information statement and fingerprints; required pursuant to subdivision h for the individual identified as the prescription drug wholesaler applicant's designated representative for the facility.
 - h. Each individual identified by a prescription drug wholesaler applicant as a designated representative for a facility and therefore required by subdivision g to provide a personal information statement and fingerprints shall provide the following information to the state:
 - (1) The individual's places of residence for the past seven years;

- (2) The individual's date and place of birth;
- (3) The individual's occupations, positions of employment, and offices held during the past seven years;
- (4) The principal business and address of any business, corporation, or other organization in which each office of the individual was held or in which each occupation or position of employment was carried on;
- (5) Whether the individual has been, during the past seven years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;
- (6) Whether, during the past seven years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control, or distribution of prescription drugs or criminal violations, together with details concerning any of those events;
- (7) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;
- (8) A description of any misdemeanor or felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen days after the disposition of the appeal, submit to the state a copy of the final written order of disposition; and
- (9) A photograph of the individual taken in the previous one hundred eighty days.

3-4. The information required under subsection 23 must be provided under oath.

4-5. The board may not issue a wholesale distributor license to an applicant, unless the board:

- a. Inspects or appoints a third party recognized by the board for the purpose of inspecting the wholesale distribution operations of the facility before initial licensure and continues to inspect periodically thereafter in accordance with a schedule to be determined by the board, but not less than every three years. Manufacturing facilities are exempt from inspection by the board if the manufacturing facilities are currently registered with the federal food and drug administration in accordance with section 510 of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301]; and
- b. Determines that the designated representative meets the following qualifications:

- (1) Is at least twenty-one years of age;
 - (2) Has been employed full time for at least three years in a pharmacy or with a wholesale distributor in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs, medical gases, or medical equipment;
 - (3) Is employed by the applicant full time in a managerial level position;
 - (4) Is actively involved in and aware of the actual daily operation of the wholesale distributor;
 - (5) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;
 - (6) Is serving in the capacity of a designated representative for only one applicant at a time, except where more than one licensed wholesale distributor is colocated in the same facility and the wholesale distributors are members of an affiliated group, as defined in section 1504 of the Internal Revenue Code [26 U.S.C. 1504];
 - (7) Does not have any convictions under any federal, state, or local laws relating to wholesale or retail prescription drug, medical gas, or medical equipment distribution or distribution of controlled substances; and
 - (8) Does not have any felony conviction under federal, state, or local laws.
- ~~5-6.~~ The board shall submit the fingerprints provided by an individual with a license application for a statewide and nationwide criminal history background record check. The nationwide criminal history background record check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant.
- ~~6-7.~~ The board shall require every wholesale prescription drug distributor applying for a license to submit a bond of at least one hundred thousand dollars, or other equivalent means of security acceptable to the state, including an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to a fund established by the state under subsection 7. Obtaining and maintaining accreditation or certification from the national association of boards of pharmacy's verified accredited wholesale distributor satisfies this requirement. A chain pharmacy warehouse that is engaged only in intracompany transfers is not subject to the bond requirement. The purpose of the bond is to secure payment of any fines or penalties imposed by the state and any fees and costs incurred by the state regarding that license which are authorized under state law and which the licensee fails to pay thirty days after the fines, penalties, or costs become final. The state may make a claim against the bond or security until one year after the licensee's license ceases to be valid. A single bond may cover all facilities operated by the applicant in the state. Any chain pharmacy warehouse that is engaged only in intracompany transfers is exempt from the bond requirement.
- ~~7.~~ The board shall establish a fund in which to deposit the wholesale distributor bonds. Money in the fund is appropriated to the board on a continuing basis.

8. If a wholesale distributor distributes prescription drugs, medical gases, or medical equipment from more than one facility, the wholesale distributor shall obtain a license for each facility.
9. If a manufacturer manufactures prescription drugs, medical gases, or medical equipment in more than one facility but does not engage in wholesale distribution to North Dakota from those facilities, the manufacturer is not required to obtain a license for each facility.
10. The board shall mail or e-mail a notice for license renewal to each licensee before the first day of the month in which the license expires. If application for renewal of the license, along with the required fee, is not received by the board before the first day of the following month, the license expires on the last day of that month. Timely renewal is the responsibility of the licensee.
11. In accordance with each licensure renewal, the board shall send ~~to make available on the board's website for each wholesale distributor licensed under this section a form setting forth~~ the information that the wholesale distributor provided pursuant to subsection 23. Within thirty days of receiving the ~~form~~ notice, the wholesale distributor ~~must~~ shall identify and state under oath to the state licensing authority all changes or corrections to the information that was provided under subsection 23. Changes in, or corrections to, any information in subsection 23 must be submitted to the board as required by that authority. The board may suspend, revoke, or refuse to renew the license of a wholesale distributor if the board determines that the wholesale distributor no longer qualifies for the license issued under this section.
- 40-12. The designated representative identified pursuant to subdivision g of subsection 23 must receive and complete continuing training in applicable federal and state laws governing wholesale distribution of prescription drugs, medical gases, or medical equipment.
- 44-13. Information provided under subdivision h of subsection 23 may not be disclosed to any person other than a government agency that needs the information for licensing or monitoring purposes.

SECTION 4. AMENDMENT. Section 43-15.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-04. Requirements to distribute prescription drugs, medical gases, or medical equipment.

1. A person may not engage in wholesale distributions of prescription drugs without, ~~after December 31, 2007,~~ obtaining and maintaining accreditation or certification from the national association of boards of pharmacy's verified accredited wholesale distributor or an accreditation body approved by the board under subsection 4, obtaining and maintaining a license issued by the board, and paying any reasonable fee required by the board. ~~By action of the board, the deadline may be extended through December 31, 2008.~~
2. The board may not issue or renew the license of a wholesale ~~drug~~ distributor that does not comply with this chapter. The board shall require a separate license for each facility or location where wholesale distribution operations are conducted. An agent or employee of any licensed wholesale ~~drug~~ distributor does not need a license and may lawfully possess pharmaceutical drugs, medical gases, or medical equipment when acting in the usual course of

business or employment. The issuance of a license under this chapter does not affect tax liability imposed by the tax department on any wholesale drug distributor.

3. An out-of-state wholesale distributor or pharmacy distributor or a principal or agent of the distributor may not conduct business in this state unless the distributor has obtained the necessary license from the board, paid the fee required by the board, and registered with the secretary of state. Application for a license must be made on a form furnished by the board and when submitted by the applicant to the board must include a copy of the certificate of authority from the secretary of state. The issuance of a license under this section does not affect tax liability imposed by the tax department on any out-of-state wholesale distributor or pharmacy distributor. The board may adopt rules that permit out-of-state wholesale drug distributors to obtain a license on the basis of reciprocity if an out-of-state wholesale drug distributor possesses a valid license granted by another state and the legal standards for licensure in the other state are comparable to the standards under this chapter and the other state extends reciprocity to wholesale drug distributors licensed in this state. However, if the requirements for licensure under this chapter are more restrictive than the standards of the other state, the out-of-state wholesale drug distributor must shall comply with the additional requirements of this chapter to obtain a license under this chapter.
4. The board may adopt rules to approve an accreditation body to evaluate a wholesale drug distributor's operations to determine compliance with professional standards, this chapter, and any other applicable law, and perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesale drug distributor.
5. The board or a designee of the board may conduct inspections during normal business hours upon all open premises purporting or appearing to be used by a wholesale distributor or pharmacy distributor in this state. A distributor that provides adequate documentation of the most recent satisfactory inspection less than three years old by the United States food and drug administration is exempt from further inspection for a period of time determined by the board. This exemption does not bar the board from initiating an investigation pursuant to a complaint regarding a wholesale distributor or pharmacy distributor. A wholesale distributor or pharmacy distributor may keep records at a central location apart from the principal office of the wholesale distributor or pharmacy distributor or the location at which the drugs are stored and from which they were shipped, provided that the records are made available for inspection within three business days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription recordkeeping.

SECTION 5. AMENDMENT. Section 43-15.3-07 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-07. Order to cease distribution.

1. The board shall issue an order requiring the appropriate person, including the distributors or retailers of the drug, gas, or equipment to immediately cease distribution of the drug, gas, or equipment within the state if the board finds that there is a reasonable probability that:

- a. A wholesale distributor, other than a manufacturer, has violated a provision in this chapter or falsified a pedigree or sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug, medical gas, or medical equipment intended for human use;
 - b. The prescription drug, medical gas, or medical equipment at issue as a result of a violation in subdivision a could cause serious, adverse health consequences or death; and
 - c. Other procedures would result in unreasonable delay.
2. An order under subsection 1 must provide the individual subject to the order with an opportunity for an informal hearing, to be held not later than ten days after the date of the issuance of the order, on the actions required by the order. If, after providing an opportunity for such a hearing, the board determines that inadequate grounds exist to support the actions required by the order, the board shall vacate the order.

SECTION 6. AMENDMENT. Section 43-15.3-08 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-08. Prohibited acts - Penalty.

1. Except as otherwise provided under section 43-15.3-09, it is a class B misdemeanor for a person to perform or cause the performance of or aid and abet any of the following acts in this state:
 - a. Failing to obtain a license under this chapter or operating without a valid license when a license is required by this chapter.
 - b. If the requirements of subsection 1 of section 43-15.3-05 are applicable and are not met, purchasing or otherwise receiving a prescription drug, medical gas, or medical equipment from a pharmacy.
 - c. If a state license is required under subsection 2 of section 43-15.3-05, selling, distributing, or transferring a prescription drug, medical gas, or medical equipment to a person that is not authorized under the law of the jurisdiction in which the person receives the prescription drug, medical gas, or medical equipment to receive the prescription drug, medical gas, or medical equipment.
 - d. Failing to deliver prescription drugs, medical gases, or medical equipment to specified premises, as required by subsection 3 of section 43-15.3-05.
 - e. Accepting payment or credit for the sale of prescription drugs, medical gases, or medical equipment in violation of subsection 5 of section 43-15.3-05.
 - f. Failing to maintain or provide pedigrees as required by this chapter.
 - g. Failing to obtain, pass, or authenticate a pedigree, as required by this chapter.
 - h. Providing the board or any of the board's representatives or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of this chapter.

- i. Obtaining or attempting to obtain a prescription drug, medical gas, or medical equipment by fraud, deceit, misrepresentation, or engaging in misrepresentation or fraud in the distribution of a prescription drug, medical gas, or medical equipment.
 - j. Except for the wholesale distribution by manufacturers of a prescription drug, medical gas, or medical equipment that has been delivered into commerce pursuant to an application approved under federal law by the federal food and drug administration, manufacturing, repacking, selling, transferring, delivering, holding, or offering for sale any prescription drug, medical gas, or medical equipment that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution.
 - k. Except for the wholesale distribution by a manufacturer of a prescription drug, medical gas, or medical equipment that has been delivered into commerce under an application approved under federal law by the federal food and drug administration, adulterating, misbranding, or counterfeiting any prescription drug, medical gas, or medical equipment.
 - l. Receiving any prescription drug, medical gas, or medical equipment that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug, gas, or equipment for pay or otherwise.
 - m. Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug, medical gas, or medical equipment or the commission of any other act with respect to a prescription drug that, medical gas, or medical equipment which results in the prescription drug, medical gas, or medical equipment being misbranded.
2. The prohibited acts in subsection 1 do not include a prescription drug, medical gas, or medical equipment manufacturer or agent of a prescription drug, medical gas, or medical equipment manufacturer obtaining or attempting to obtain a prescription drug, medical gas, or medical equipment for the sole purpose of testing the prescription drug, medical gas, or medical equipment for authenticity.

SECTION 7. AMENDMENT. Section 43-15.3-09 of the North Dakota Century Code is amended and reenacted as follows:

43-15.3-09. Penalties.

1. The board may impose the following sanctions if, after a hearing under chapter 28-32, the board finds that a person has violated section 43-15.3-08:
 - a. Revoke, suspend, or limit the wholesale drug distributor's license issued under this chapter if the person is a wholesale drug distributor; or
 - b. Assess a civil penalty against the person. A civil penalty assessed may not exceed ten thousand dollars per violation.
2. The board, upon a showing of a violation of this chapter, may revoke, suspend, or limit a license issued under this chapter after a proceeding under chapter 28-32. After a proceeding under chapter 28-32, the board may assess

a civil penalty against a licensed wholesale drug distributor of not more than ten thousand dollars for each occurrence. If the licensed wholesale drug distributor fails to pay the civil penalty within the time specified by the board, the board may suspend the license without additional proceedings.

3. Upon application by the board, a court may grant an injunction, a restraining order, or other order to enjoin a person from offering to engage or engaging in the performance of any practices for which a permit or license is required by any applicable federal or state law including this chapter, upon a showing that the practices were or are likely to be performed or offered to be performed without a permit or license. An action brought under this subsection must be commenced either in the county where the conduct occurred or is likely to occur or in the county in the state where the defendant resides. An action brought under this subsection is in addition to any other penalty provided by law and may be brought concurrently with other actions to enforce this chapter.
4. A person that knowingly purchases or receives a prescription drug, medical gas, or medical equipment through any source other than a person licensed under this chapter, including a wholesale distributor, manufacturer, pharmacy distributor, or pharmacy commits a class A misdemeanor. A subsequent unrelated violation of this subsection is a class C felony.
5. A person that knowingly fails to provide a duly authorized individual the right of entry as provided in subsection 5 of section 43-15.3-04 is guilty of a class A misdemeanor for the first conviction and a class C felony for each subsequent conviction.
6. A person ~~whethat~~ knowingly or intentionally engages in the wholesale distribution of a prescription drug, medical gas, or medical equipment without a license issued under this chapter commits a class C felony. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and with intent to defraud or deceive fails to obtain or deliver to another person a complete and accurate required pedigree concerning a prescription drug before obtaining the prescription drug from another person or transferring the prescription drug to another person or falsely swears or certifies that the person has authenticated any documents to the wholesale distribution of prescription drugs.
- ~~6.7.~~ A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug, medical gas, or medical equipment and knowingly or intentionally:
 - a. Destroys, alters, conceals, or fails to maintain a complete and accurate required pedigree concerning a prescription drug in the person's possession;
 - b. Purchases or receives prescription drugs, medical gases, or medical equipment from a person not authorized to distribute prescription drugs, medical gases, or medical equipment in wholesale distribution;
 - c. Sells, barter, brokers, or transfers a prescription drug, medical gas, or medical equipment to a person not authorized to purchase the prescription drug, medical gas, or medical equipment in the jurisdiction in which the

- person receives the prescription drug, medical gas, or medical equipment in a wholesale distribution;
- d. Forges, counterfeits, or falsely creates a pedigree;
 - e. Falsely represents a factual matter contained in a pedigree; or
 - f. Fails to record material information required to be recorded in a pedigree.
- 7-8. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and possesses a required pedigree concerning a prescription drug, knowingly or intentionally fails to authenticate the matters contained in the pedigree as required, and distributes or attempts to further distribute the prescription drug.

SECTION 8. Section 43-15.3-10 of the North Dakota Century Code is created and enacted as follows:

43-15.3-10. Retail medical gas retailers - Reciprocity.

1. A person may not sell or deliver medical gases and related medical equipment directly to a consumer unless licensed by the board as a retail medical gas retailer.
 - a. As a term of licensure under this section, a licensee shall employ or contract with an in-state licensed respiratory therapist or other health care professional authorized by that professional's practice act to prescribe or administer the medical gases and related medical equipment. The applicant shall furnish on the application the name and license number of the individual or licensee the applicant employees or with which the applicant contracts. Within thirty days of a change, a retailer shall provide the board with notice of any change in the licensee.
 - b. A retail medical gas retailer may sell or deliver to a patient's home medical gases and related equipment in accordance with a practitioner's prescription or drug order. The retail medical gas retailer shall keep the original drug order or an electronic copy of each drug order at the licensed location or must have available for inspection an electronic copy of the original drug order or electronic copy of the drug order. A prescription or drug order is not valid after one year, except a prescription or order for maintenance equipment may be perpetual. A retail medical gas retailer shall maintain a prescription or drug order for five years.
2. An out-of-state retail medical gas retailer or a principal or agent of the retailer may not conduct business in this state unless the retailer is licensed by the board as a retail medical gas retailer, paid the fee required by the board, and is registered with the secretary of state. An applicant shall submit an application for a license on a form furnished by the board and the application must be accompanied by a copy of the certificate of authority from the secretary of state. The issuance of a license under this section does not change or affect tax liability imposed by this state on an out-of-state medical gas retailer.
3. The board may adopt rules that permit an out-of-state retail medical gas retailer to obtain a license on the basis of reciprocity if the retailer possesses a valid license granted by another jurisdiction and the legal standards for

licensure in the other jurisdiction are comparable to the standards under this chapter and if the other jurisdiction extends reciprocity to retail medical gas retailers licensed in this state. However, if the requirements for licensure under this chapter are more restrictive than the standards of the other jurisdiction, the out-of-state retail medical gas retailer shall comply with the additional requirements of this chapter to obtain a license under this chapter.

SECTION 9. Section 43-15.3-11 of the North Dakota Century Code is created and enacted as follows:

43-15.3-11. Retail durable medical equipment retailers - Reciprocity.

1. A person may not sell or deliver durable medical equipment directly to a consumer unless licensed by the board as a retail durable medical equipment retailer.
 - a. As a term of licensure under this section, a licensee shall employ or contract with an in-state licensed health care professional authorized by that professional's practice act to prescribe or administer the durable medical equipment. For purposes of this section, a licensed health care professional may include a respiratory therapist, physical therapist, pharmacist, registered nurse, licensed practical nurse, advanced practice registered nurse, physician assistant, and occupational therapist.
 - (1) The licensed health care professional must be on staff to oversee and provide custom orthotics and prosthetics. The board shall establish certification requirements for a qualified health care professional which may include certification through the American board for certification in orthotics and prosthetics or the board for certification in orthotics as a certified orthotist, certified prosthetist, certified prosthetist orthotist, certified orthotic fitter, certified mastectomy fitter, or certified pedorthist.
 - (2) The licensed health care professional must be on staff to oversee and provide complex rehabilitation products and services for seating and mobility systems. The board shall establish certification requirements for a qualified health care professional which may include certification through the rehabilitation engineering and assistive technology society of North America as an assistive technology professional.
 - (3) The applicant shall furnish on the application the name and license number of the individual the licensee employs or with which the applicant contracts. Within thirty days of a change, the licensee shall provide the board with notice of any change in the licensee.
 - b. A durable medical equipment retailer may sell or deliver to a patient's home durable medical-related equipment in accordance with a practitioner's prescription or drug order. The retail durable medical equipment retailer shall keep the original prescription or order or an electronic copy at the licensed location or must have available for inspection an electronic copy of the original order or electronic copy of the order. A prescription or order is not valid after one year, except a prescription or order for repair, maintenance, or replacement of equipment may be perpetual. A retail durable medical equipment retailer shall maintain a prescription or order for five years. A durable medical equipment retailer may only obtain medical equipment from a manufacturer or wholesaler that is duly licensed by the state.

2. An out-of-state retail durable medical equipment retailer or a principal or agent of the retailer may not conduct business in this state unless the retailer is licensed by the board as a retail durable medical equipment retailer, paid the fee required by the board, and is registered with the secretary of state. An applicant shall submit an application for a license on a form furnished by the board and the applicant must be accompanied by a copy of the certificate of authority from the secretary of state. The issuance of a license under this section does not change or affect tax liability imposed by this state on an out-of-state retail durable medical equipment retailer.
3. The board may adopt rules that permit an out-of-state retail durable medical equipment retailer to obtain a license on the basis of reciprocity if the retailer possesses a valid license granted by another jurisdiction and the legal standards for licensure in the other jurisdiction are comparable to the standards under this chapter and if the other jurisdiction extends reciprocity to retail durable medical equipment retailers licensed in this state. However, if the requirements for licensure under this chapter are more restrictive than the standards of the other jurisdiction, the out-of-state retail durable medical equipment retailer shall comply with the additional requirements of this chapter to obtain a license under this chapter.

SECTION 10. Section 43-15.3-12 of the North Dakota Century Code is created and enacted as follows:

43-15.3-12. Fees.

The board shall charge and collect the following fees under this chapter:

<u>Chain drug warehouse</u>	<u>\$200</u>
<u>Chain pharmacy warehouse</u>	<u>\$200</u>
<u>Durable medical equipment distributor, medical gas distributor, or both</u>	<u>\$200</u>
<u>Durable medical equipment retailer, medical gas retailer and distributor, or both</u>	<u>\$300</u>
<u>Hospital offsite warehouse</u>	<u>\$200</u>
<u>Jobber or broker</u>	<u>\$400</u>
<u>Manufacturer</u>	<u>\$400</u>
<u>Medical gas retailer, durable medical equipment retailer, or both</u>	<u>\$200</u>
<u>Medical gas durable medical equipment distributor and retailer</u>	<u>\$300</u>
<u>Own label distributor</u>	<u>\$400</u>
<u>Pharmacy distributor</u>	<u>\$200</u>
<u>Private label distributor</u>	<u>\$400</u>
<u>Repackager</u>	<u>\$400</u>
<u>Reverse distributor</u>	<u>\$200</u>
<u>Third-party logistic provider</u>	<u>\$400</u>
<u>Veterinary-only distributor</u>	<u>\$200</u>
<u>Virtual manufacturer</u>	<u>\$400</u>
<u>Virtual wholesaler or distributor</u>	<u>\$400</u>
<u>Wholesaler or distributor</u>	<u>\$400</u>

Approved April 12, 2013
 Filed April 12, 2013

CHAPTER 323

SENATE BILL NO. 2135

(Senators Dever, J. Lee, Axness)
(Representatives Porter, Rohr, Hogan)

AN ACT to create and enact chapter 43-17.3 of the North Dakota Century Code, relating to a physician health program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 43-17.3 of the North Dakota Century Code is created and enacted as follows:

43-17.3-01. Definitions.

As used in this chapter:

1. "Board" means the state board of medical examiners.
2. "Committee or designated agency" means a committee or delegated agency of the physician health program which is composed of physicians and other professionals who have expertise in the areas of alcoholism, drug abuse, or mental illness and which is designated by the physician health program to perform any or all of the activities set forth in section 43-17.3-02 pursuant to agreement with the board.
3. "Impairment" means the presence of any physical, mental, or behavioral disorder or pattern of alcohol or substance abuse which interferes with a licensee's ability to engage safely in professional activities.
4. "Licensee" means a physician or other other health professional under the jurisdiction of the board, and includes an applicant for licensure or regulation by the board.
5. "Physician health program" or "program" means a board-sanctioned program for the detection, intervention, and monitoring of licensees with conditions that could result in impairment.
6. "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup, or aftercare services or combination of any of these services provided by an organization or by an individual authorized by the board or the physician health program to provide such services for a licensee taking part in the physician health program.

43-17.3-02. Physician health program.

1. The board may enter an agreement with the physician health program for the program to undertake those functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include any or all of the following:

- a. Contracting with agencies or providers of diagnostic, monitoring, or treatment services;
 - b. Receiving and evaluating reports of licensees who may be experiencing potentially impairing conditions;
 - c. Intervening in cases in which a licensee is determined to be in need of treatment;
 - d. Referring licensees to appropriate services;
 - e. Monitoring the treatment and aftercare services provided to licensees;
 - f. Educating licensees and the public about the functions of the program and the program's relationship to the board; and
 - g. Performing other activities as agreed upon by the board and the physician health program.
2. The board may participate, through its licensing fees or other specified funds, in the funding of the physician health program.

43-17.3-03. Physician health program requirements.

In consultation with the board, the physician health program shall develop procedures for:

1. Periodic reporting of statistical information regarding physician health program activity.
2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each case. Except as expressly provided under this chapter, the physician health program may not disclose any personally identifiable information about licensee participants.
3. Immediate reporting to the board the identity and results of any contact or investigation concerning an impaired licensee who is believed to constitute an imminent danger to the public or to the licensee.
4. Reporting to the board, in a timely fashion, the identity and results of any contact or investigation concerning a potentially impaired licensee:
 - a. Who refuses to cooperate with the program;
 - b. Who refuses to submit to evaluation or treatment;
 - c. Who is not in compliance with a contractual treatment plan; or
 - d. Whose possible impairment is not substantially alleviated through treatment and:
 - (1) Who the program determines is unable to practice professionally with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or

(2) Who may pose a threat to the health or safety of any individual.

5. Reporting to the board, in a timely fashion, the identity of any licensee participant regarding whom the program learns of the filing of any disciplinary charges or actions or violations of chapter 43-17.
6. Entering contractual agreements with each participant in the program which make clear the program procedures, the responsibilities of program participants, and the consequences of noncompliance with the program or with contractual agreements, including the program's reporting obligations to the board.

43-17.3-04. Evaluation.

If the board determines a licensee currently exhibits possible impairment, the board may direct that an evaluation of the licensee be conducted by the physician health program or by the committee or designated agency for the purpose of determining whether there is a current need for treatment or monitoring of the licensee to assure the licensee is able to practice safely. The physician health program shall report the findings of this evaluation to the board. As a condition of application, every applicant for initial licensure or renewal of licensure shall agree to submit to such an evaluation for cause within a specified timeframe, and to the release of the results of the evaluation to the board.

43-17.3-05. Self-reporting and self-referral.

1. A licensee may voluntarily self-refer or self-report to the physician health program or the board that the licensee may have a potentially impairing condition.
2. A licensee:
 - a. Who under this section voluntarily seeks the assistance of the physician health program in assessing or dealing with a condition that could possibly lead to impairment will not be reported to the board solely on the basis of this self-referral. However, if a licensee who self-refers or self-reports refuses evaluation by the program; if the evaluation reveals evidence of a condition or impairment that could affect the licensee's ability to practice or constitutes a threat to the safety of patients or the public; or the licensee refuses to cooperate with the treatment plan, monitoring and followup, or aftercare devised by the program, including any recommendation about current continuation in practice, the program shall report the identity and findings of the evaluation of the licensee to the board. Participation in the program does not protect a licensee from board action resulting from a report of the licensee's possible violations of chapter 43-17.
 - b. Who self-reports or self-refers to the board for a potentially impairing condition may be referred by the board to the physician health program in the manner prescribed by board policies, and subsequent reporting by the program to the board will be at the discretion and in the manner prescribed by the board.
 - c. Who is participating in or who has completed a contract for treatment with and has been discharged from the physician health program, who is in full compliance with all facets of the treatment plan or has completed treatment and is compliant with aftercare, may answer in the negative on

any question on the application to the board for licensure or licensure renewal regarding current impairment by that condition or those conditions for which the licensee is currently participating in or has been discharged from the physician health program. However, any recurrence of the impairing condition or conditions or the existence of other potentially impairing conditions that are not currently known to the physician health program must be reported on the application.

43-17.3-06. Mandated reporting.

A report by a health professional, including a self-report or self-referral by a licensee to the physician health program, must be deemed to be a report to the board for the purposes of mandated reporting of physician impairment.

43-17.3-07. Confidentiality of records.

1. Notwithstanding section 44-04-18, except as otherwise provided in this chapter, all physician health program records containing identifying information about a licensee participant are confidential and may not be disclosed:
 - a. To any third person, unless disclosure is reasonably necessary for the accomplishment of the purposes of intervention, rehabilitation, referral assistance, or support services; or
 - b. In any legal or administrative proceeding, unless privilege or disclosure is otherwise required by law.
2. Except as provided under this section, a staff member handling records for administrative purposes; a person engaged by the program to perform evaluations, monitoring, or followup; and a person in attendance at any meeting of a physician health program or of a committee or designated agency may not be required to testify as to the content of any findings, committee discussion, or proceedings.

43-17.3-08. Liability.

1. Notwithstanding any other provision of law, the board, the physician health program, committee or designated agency, or delegated individuals and members of any of these entities are not liable to any person for any acts, omissions, or recommendations made in good faith within the scope of responsibilities pursuant to this chapter.
2. A person that in good faith and without malice which makes a report to the physician health program or the board under this section is not liable to any person for that report.

Approved April 2, 2013
Filed April 2, 2013

CHAPTER 324

SENATE BILL NO. 2110

(Industry, Business and Labor Committee)
(At the request of the North Dakota Real Estate Appraiser
Qualifications and Ethics Board)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and a new section to chapter 43-23.3 of the North Dakota Century Code, relating to criminal history record checks of appraisers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁷ **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The North Dakota real estate appraiser qualifications and ethics board for applicants for permits or permittees under chapter 43-23.3, except that criminal history record checks for permittees need not be made unless required by the board.

SECTION 2. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Criminal history record checks.

The board shall require an applicant for a permit, under sections 43-23.3-04.1, 43-23.3-07, 43-23.3-08, 43-23.3-09, and 43-23.3-11, and may require a permittee to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or permittee.

Approved March 14, 2013
Filed March 15, 2013

¹⁶⁷ Section 12-60-24 was also amended by section 7 of House Bill No. 1012, chapter 12, section 1 of House Bill No. 1327, chapter 491, section 1 of House Bill No. 1389, chapter 325, and section 1 of Senate Bill No. 2304, chapter 232.

CHAPTER 325

HOUSE BILL NO. 1389

(Representatives Wieland, Beadle, Hanson, Larson, Louser, Streyle)
(Senators Heckaman, J. Lee)

AN ACT to create and enact chapter 43-23.5 of the North Dakota Century Code, relating to appraisal management company regulation; to amend and reenact the new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2110, as approved by the sixty-third legislative assembly, relating to criminal history background checks; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁸ **SECTION 1. AMENDMENT.** The new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code as created by section 1 of Senate Bill No. 2110, as approved by the sixty-third legislative assembly, is amended and reenacted as follows:

The North Dakota real estate appraiser qualifications and ethics board for applicants for permits or registration or permittees, registrants, owners, or controlling persons under ~~chapter~~ chapters 43-23.3 and 43-23.5, except that criminal history record checks for permittees, registrants, owners, or controlling persons need not be made unless required by the board.

SECTION 2. Chapter 43-23.5 of the North Dakota Century Code is created and enacted as follows:

43-23.5-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Appraisal firm" means any person or entity that exclusively employs persons on an employer and employee basis for the performance of real estate appraisal services in the normal course of its business and the real estate appraisal services being performed are in accordance with the uniform standards of professional appraisal practices.
2. "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party that oversees a network or panel of more than fifteen certified or licensed appraisers in this state or twenty-five or more nationally within a given year, that is authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by

¹⁶⁸ Section 12-60-24 was also amended by section 7 of House Bill No. 1012, chapter 12, section 1 of House Bill No. 1327, chapter 491, section 1 of Senate Bill No. 2110, chapter 324, and section 1 of Senate Bill No. 2304, chapter 232.

an underwriter or other principal in the secondary mortgage markets that engages in appraisal management services.

3. "Appraisal management services" means to, directly or indirectly, perform any of the following functions on behalf of a lender, financial institution, client, or any other person in conjunction with a consumer credit transaction that is secured by a consumer's primary dwelling:
 - a. Administer an appraiser panel.
 - b. Recruit, retain, or select appraisers.
 - c. Qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel.
 - d. Contract with appraisers to perform appraisal assignments.
 - e. Receive an order for an appraisal from one person, and deliver the order for the appraisal to an appraiser that is part of an appraiser panel for completion.
 - f. Manage the process of having an appraisal performed, including providing administrative duties, such as receiving appraisal orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed.
 - g. Track and determine the status of appraisal orders.
 - h. Conduct an appraisal review or other quality control of a completed appraisal prior to the delivery of the appraisal to the person that ordered the appraisal.
 - i. Provide a completed appraisal performed by an appraiser to one or more clients.
4. "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value, or compliance with the uniform standards of professional appraisal practice. This term does not include:
 - a. A general examination for grammatical, typographical, or other similar errors.
 - b. A general examination for completeness, including regulatory and/or client requirements as specified in the agreement process that does not communicate an opinion.
5. "Appraiser panel" means a network of licensed or certified appraisers who have:
 - a. Responded to an invitation, request, or solicitation from an appraisal management company, in any form, to perform appraisals for persons that

- have ordered appraisals through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as requested and assigned by the appraisal management company.
- b. Been selected and approved by an appraisal management company to perform appraisals for any client of the appraisal management company that has ordered an appraisal through the appraisal management company, or to perform appraisals for the appraisal management company directly, on a periodic basis, as assigned by the appraisal management company.
6. "Board" means the North Dakota real estate appraiser qualifications and ethics board.
7. "Controlling person" means:
- a. An officer, director, or owner of greater than a ten percent interest of a corporation, partnership, or other business entity seeking to act as an appraisal management company in this state.
- b. An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter a contractual relationship with other persons for performance of services requiring registration as an appraisal management company and has the authority to enter agreements with appraisers for the performance of appraisals.
- c. An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.
8. "Federal financial institutions regulatory agencies" includes the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, and the national credit union administration.
9. "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the resolution trust corporation engages in, contracts for, or regulates, and requires the services of an appraiser.
10. "Real estate-related financial transaction" means any transaction involving:
- a. The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof.
- b. The refinancing of real property or interests in real property.
- c. The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

43-23.5-02. Rulemaking authority.

The board shall have the authority to adopt rules that are reasonably necessary to implement, administer, and enforce the provisions of this chapter.

43-23.5-03. Registration required.

It is unlawful for a person to directly or indirectly engage or to attempt to engage in business as an appraisal management company, to directly or indirectly perform or to attempt to perform appraisal management services, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the board.

43-23.5-04. Registration process.

An applicant for registration as an appraisal management company shall submit to the board an application on forms prescribed by the board and pay a fee established by the board.

The forms shall require information necessary to determine eligibility for registration.

43-23.5-05. Consent to service of process.

An applicant for registration as an appraisal management company that is not domiciled in this state shall complete an irrevocable consent to service of process, as prescribed by the secretary of state.

43-23.5-06. Expiration of registration.

Registrations will expire on September thirtieth of each year. The expiration date of the registration must appear on the registration and no other notice of its expiration need be given to the registrant.

43-23.5-07. Exemptions.

The provisions of this chapter shall not apply to:

1. An appraisal firm.
2. A financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government.
3. A person who enters an agreement with an appraiser for the performance of an appraisal that upon completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal.
4. An appraisal management company with an appraisal panel of not more than fifteen certified or licensed appraisers in this state or twenty-five or more nationally within a given year.
5. An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under chapter 43-23.5-21, if regulated by an agency of this state, or the Truth in Lending Act [15 U.S.C. Section 1601 et seq.], if regulated by the United States government.

43-23.5-08. Owner requirements.

1. An appraisal management company applying for, holding, or renewing a registration under this chapter shall not be more than ten percent owned by:

- a. A person who has had an appraiser license or certification in this state or in any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.
 - b. An entity that is more than ten percent owned by any person who has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.
2. Each person that owns more than ten percent of an appraisal management company applying for, holding, or renewing a registration under this chapter shall:
 - a. Be of good moral character.
 - b. Submit to a criminal background investigation for an initial application or as required by the board.
 3. Each appraisal management company applying for a registration or for renewal of a registration under this chapter shall certify to the board on a form prescribed by the board that the company has reviewed each entity that owns more than ten percent of the appraisal management company and that no entity that owns more than ten percent of the appraisal management company is more than ten percent owned by any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently granted or reinstated.

43-23.5-09. Controlling person.

An appraisal management company applying for a registration or for renewal of a registration in this state shall designate one controlling person that shall serve as the main contact for all communication between the board and the company. The controlling person shall:

1. Remain in good standing in this state or in any other state that the controlling person holds a licensure or certification permit from; however, nothing in this chapter shall require that a designated controlling person hold an appraiser license or certification in any jurisdiction.
2. Have never had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.
3. Be of good moral character.
4. Submit to a criminal background investigation for an initial application or as required by the board.

43-23.5-10. Employee requirements.

An appraisal management company that applies to the board for a registration or to renew a registration to do business in this state as an appraisal management company may not:

1. Knowingly employ any person for the performance of appraisal or appraisal management services who has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.
2. Knowingly enter any independent contractor arrangement, whether in verbal, written, or other form, for the performance of appraisal or appraisal management services, with any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.
3. Knowingly enter any contract, agreement, or other business relationship, whether in verbal, written, or any other form, with any entity that employs, has entered an independent contract arrangement, or has entered any contract, agreement, or other business relationship, whether in verbal, written, or any other form, for the performance of appraisal or appraisal management services, with any person that has had an appraiser license or certification in this state or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted.

43-23.5-11. Appraiser engagement.

Before or at the time of placing an assignment with an appraiser on the appraiser panel of an appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment holds a permit in good standing in this state.

43-23.5-12. Appraisal review.

Any employee of, or independent contractor to, the appraisal management company that performs an appraisal review for a property located in this state must be:

1. A certified or licensed appraiser in good standing in this state.
2. A certified or licensed appraiser in good standing in another state.

43-23.5-13. Verification of licensure or certification.

1. An appraisal management company registered in this state may not enter any contract or agreement with an appraiser for the performance of appraisals unless the company verifies that the appraiser is licensed or certified in good standing in this state.
2. An appraisal management company seeking to be registered in this state or to renew a registration in this state shall certify to the board on a form prescribed by the board that the company has a system and process in place to verify that an individual being added to the appraiser panel of the company for appraisal services holds a permit in good standing in this state.

43-23.5-14. Appraisal management company certification of appraisal review system.

Each appraisal management company seeking to be registered or to renew a registration in this state shall certify to the board on a form prescribed by the board that the company has a system in place to perform an appraisal review of the work product of a statistically significant number of appraisal reports submitted by independent appraisers performing appraisals for the appraisal management company on a periodic basis to validate that the appraisals are being conducted in accordance with the uniform standards of professional appraisal practice, and chapter 43-23.3, and the rules adopted under this chapter. An appraisal management company shall report to the board the results of any appraisal reviews in which an appraisal is found to be substantially noncompliant with the uniform standards of professional appraisal practice.

43-23.5-15. Retention of records.

1. Each appraisal management company seeking to be registered or to renew an existing registration in this state shall certify to the board on a form prescribed by the board that the company maintains a detailed record of each service request that the company receives for appraisal of real property located in this state.
2. An appraisal management company registered in this state shall retain for five years all records required to be maintained under this chapter as described in rules. This five-year period shall commence on the date of the final action by the appraisal management company for each individual transaction or, if the appraisal management company is notified that the transaction is involved in litigation, the five-year period shall commence on the date the litigation is finally disposed.
3. All records required to be maintained by the registered appraisal management company may be made available for inspection and copying by the board on reasonable notice to the appraisal management company.

43-23.5-16. Fee disclosure system requirement.

1. An appraisal management company registered in this state shall disclose to its clients the fees paid for appraisal management services and the fees paid to the independent appraiser for the completion of an appraisal assignment.
2. An appraisal management company registered in this state shall not prohibit an independent appraiser that is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the communication of the appraisal.

43-23.5-17. Requirement of appraisal management company's payment to appraiser.

1. An appraisal management company shall, except in bona fide cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to the company or its assignee unless a mutually agreed-upon alternate arrangement has been previously established.

2. An appraisal management company seeking to be registered or to renew an existing registration in this state shall certify that the company will require appraisals to be conducted independently as required by the appraisal independence standards under section 129E of the Truth in Lending Act, including the requirements of payment or a reasonable and customary fee to independent appraisers when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.

43-23.5-18. Appraisal management company registration numbers.

1. The board shall issue a registration number to each appraisal management company that is registered in this state.
2. The board shall maintain a list of the appraisal management companies that are registered with the board.
3. An appraisal management company registered in this state shall place its registration number on engagement documents utilized by the appraisal management company for procurement of appraisal services in this state.

43-23.5-19. Fees - Bonds.

1. The board may charge the appraisal management company reasonable fees to help offset costs of operating the board. The board shall establish fees by rule.
2. The board may require by rule a surety bond of not more than twenty-five thousand dollars.

43-23.5-20. Mandatory reporting.

An appraisal management company that has a reasonable basis to believe an appraiser has failed to comply with applicable laws or rules or has substantially violated the uniform standards of professional appraisal practice shall refer the matter to the board.

43-23.5-21. Prohibited conduct.

A violation of this section may constitute grounds for discipline against an appraisal management company registered in this state. However, an appraisal management company may request an appraiser provide additional information about the basis for a valuation, correct objective factual errors in an appraisal report, or consider additional appropriate property information. No employee, director, officer, agent, independent contractor, or other third party acting on behalf of an appraisal management company may:

1. Procure or attempt to procure a registration by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for registration, or through fraud or misrepresentation.
2. Willfully violate this chapter or rules of the board.
3. Improperly influence or attempt to improperly influence the development, reporting, result, or a review of an appraisal through intimidation, coercion, extortion, bribery, or any other manner, including:

- a. Withholding payment for appraisal services.
 - b. Threatening to exclude an appraiser from future work or threatening to demote or terminate in order to improperly obtain a desired result.
 - c. Conditioning payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached.
 - d. Requesting an appraiser to report a predetermined opinion, conclusion, or valuation or the desired valuation of any person or entity.
4. Require an appraiser to provide the appraisal management company with the appraiser's digital signature or seal.
 5. Alter, amend, or change an appraisal report submitted by an appraiser without the appraiser's knowledge and written consent.
 6. Except within the first ninety days after an independent appraiser is added to an appraiser page, remove an independent appraiser from an appraiser panel without prior written notice to the appraiser, with the prior written notice including evidence of the following, if applicable:
 - a. The appraiser's illegal conduct.
 - b. A violation of the uniform standards of professional appraisal practice, this chapter, or the rules adopted by the board.
 - c. Improper or unprofessional conduct.
 7. Require an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser.
 8. Prohibit lawful communications between the appraiser and any other person who the appraiser, in the appraiser's professional judgment, believes possesses information that would be relevant.
 9. Engage in any other act or practice that impairs or attempts to impair a real estate appraiser's independence, objectivity, and impartiality.
 10. Submit or attempt to submit false, misleading, or inaccurate information in any application for registration or renewal.
 11. Fail to timely respond to any subpoena or any other request for information.
 12. Fail to timely obey an administrative order of the board.
 13. Fail to fully cooperate in any investigation.

43-23.5-22. Disciplinary proceedings.

The board may deny, suspend, revoke, impose a monetary penalty, issue a letter of reprimand, refuse to issue or renew the registration of an appraisal management company, or take other disciplinary action when:

1. The applicant or any partner has, within twelve months preceding the date of the application, violated any provision of this chapter.
2. The applicant is not of good moral character.
3. The applicant has been the holder of a registration revoked or suspended for cause, or surrendered in lieu of disciplinary proceedings.
4. The applicant, in the case of an application for renewal of any registration, would not be eligible for such registration on a first application.
5. The issuance of the registration applied for would result in a violation of any provision of this chapter or the rules adopted by the board.
6. In the conduct of affairs under the registration, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the registrant unfit to carry on appraisal management services or making continuance in the business detrimental to the public interest, or that the licensee is no longer in good faith carrying on appraisal management services, and for this conduct is found by the board to be a source of detriment, injury, or loss to the public.
7. Committed any act in violation of this chapter.
8. Violated any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of this chapter.
9. Procured a registration or a renewal of a registration for the appraisal management company or committed any other act by fraud, misrepresentation, or deceit.

43-23.5-23. Criminal history background checks.

The board shall require an applicant for registration under section 43-23.5-03, an owner under section 43-23.5-08, or a controlling person under section 43-23.5-09 to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant or the regulated individual.

43-23.5-24. Penalty.

Any person who performs appraisal management services without a certificate of registration as required by this chapter is guilty of a class A misdemeanor.

SECTION 3. EFFECTIVE DATE. Notwithstanding any other provision of this Act, an appraisal management company conducting business in this state on or before January 1, 2014, may continue to conduct business in this state without registering pursuant to this Act until sixty days after the date rules implementing the registration process created by the board take effect.

Approved April 12, 2013
Filed April 12, 2013

CHAPTER 326

SENATE BILL NO. 2082

(Human Services Committee)
(At the request of the Board of Massage)

AN ACT to amend and reenact subsection 2 of section 43-25-04, sections 43-25-05 and 43-25-07, subsection 3 of section 43-25-09, subsection 1 of section 43-25-10, and section 43-25-18 of the North Dakota Century Code, relating to massage therapy licensure and the board of massage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-25-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist, a school may charge a fee and students may accept tips under a policy set by the school. Students may practice homework unsupervised on other students, family, or friends, but no fee or tip may be charged or accepted. These massages may only be performed at the school or at the residence of the student, family member, or friend.

SECTION 2. AMENDMENT. Section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms.

The governor shall appoint a board of massage, to consist of five members. Three of the members of the board must be massage therapists who are licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year. Two additional members, who may not be massage therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each year. Each member of the board holds office until that member's successor is appointed and qualified. Any member appointed to a term beginning after June 30, 2013, may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of two years has passed since that member last served on the board.

Within one month after appointment of a new member, the board shall meet at some convenient place within the state and shall annually elect a president, vice president, and secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties.

SECTION 3. AMENDMENT. Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

43-25-07. Requisites for licensure and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, ~~a high school graduate or legal equivalent~~, and of good moral character and temperate habits is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board;
 - b. Passes an examination conducted or approved by the board; and
 - c. Pays the required fees, which must accompany the application to the board.
2. Any applicant failing to obtain licensure within six months of the initial application is entitled to reapply within six months after notification that the application was rejected, upon payment of a fee of fifty dollars or a lesser amount established by the board. Two applications exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. The board may approve alternate educational methods or methodology for applicants to complete educational requirements if the applicant has graduated from a school of massage that is accredited by a national or regional accrediting agency recognized by the United States department of education.

SECTION 4. AMENDMENT. Subsection 3 of section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

3. Continuing education of at least thirty-two continuing education hours, or equivalent college credits, submitted every two years is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than twelve hours of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability.
 - a. Odd-numbered licensed individuals report their continuing education in odd-numbered years and even-numbered licensed individuals report their continuing education in even-numbered years, based on the calendar year.
 - b. This subdivision applies for the initial licensure period. Individuals licensed on or before May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even, would need to report at least sixteen hours. Those not required to submit continuing education that initial January first would report at least twenty-four hours by the following January first. Individuals licensed after May thirty-first of their initial year, who would normally report hours of continuing education, based on their license number being odd or even

would not be required to report that cycle, but would report at least forty-eight hours for the next cycle. Those not required to submit continuing education hours that initial January first would report at least sixteen hours by the following January first. Thereafter, initial licensees would follow the normal renewal reporting cycle.

- e. ~~This subdivision applies to renewing licensees, for the implementation of the continuing education reporting cycle. On or before January 1, 2010, even-numbered licensees would submit at least sixteen hours of continuing education. On or before January 1, 2011, odd-numbered licensees would submit at least thirty-two hours of continuing education.~~

SECTION 5. AMENDMENT. Subsection 1 of section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
 - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
 - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 - d. The licensee is addicted to the habitual use of intoxicating liquors, or other legal or illegal drugs, to the extent the licensee is compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of ~~willful~~gross negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee has violated this chapter or any rule adopted by the board.

SECTION 6. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity.

1. Any person who has been duly licensed and is in good standing in another state to practice massage in a state that meets required educational hours and requirements in this state, and who has been lawfully and continuously

engaged in ~~this licensed~~ practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination.

2. An applicant for licensure by reciprocity who has been duly licensed and is in good standing to practice massage in a state with substantially similar licensure standards as determined by the board and who has been lawfully and continuously engaged in licensed practice for five years or more immediately before filing of an application to practice in this state, may be granted a license by the board without being required to take an examination if the applicant otherwise meets all of the requirements of subsection 1.

Approved March 19, 2013
Filed March 19, 2013

CHAPTER 327

HOUSE BILL NO. 1285

(Representatives Louser, Delmore, Sanford)
(Senators Andrist, G. Lee, Nelson)

AN ACT to amend and reenact subsection 1 of section 43-26.1-04 and subsection 4 of section 43-26.1-11 of the North Dakota Century Code, relating to physical therapy licensure and supervision of physical therapy assistants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-26.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~An applicant~~Before being approved for a license as a physical therapist or physical therapist assistant, ~~an applicant~~ shall:
 - a. Be of good moral character.
 - b. Complete the application process.
 - c. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.
 - d. Pass the examination approved by the board.

SECTION 2. AMENDMENT. Subsection 4 of section 43-26.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. For each patient on each date of service, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides that provide for the delivery of care that is safe, effective, and efficient.
 - a. A physical therapist assistant shall work under the supervision of a physical therapist. A physical therapist assistant may document care provided without the cosignature of the supervising physical therapist.
 - b. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the ~~onsite~~direct supervision of a physical therapist ~~who is onsite and present in the facility~~. This supervision may extend to offsite supervision of the aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient-related tasks.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 12, 2013
Filed February 19, 2013

CHAPTER 328

SENATE BILL NO. 2084

(Human Services Committee)

(At the request of the State Board of Dental Examiners)

AN ACT to create and enact a new subsection to section 43-28-06 of the North Dakota Century Code, relating to powers of the state board of dental examiners; and to amend and reenact subsection 7 of section 43-20-01.4, section 43-20-03, subsection 3 of section 43-28-06, section 43-28-10.1, and subsection 3 of section 43-28-25 of the North Dakota Century Code, relating to the practice and licensing of dental hygienists and dentists and the ownership of a practice.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 43-20-01.4 of the North Dakota Century Code is amended and reenacted as follows:

7. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities for three years. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

SECTION 2. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by.

As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct, ~~modified general~~ indirect, or general supervision of a licensed dentist. General supervision may be used if the procedures are authorized in advance by the supervising dentist, except procedures which may only be used under direct supervision as established by the board by rule.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

¹⁶⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶⁹ Section 43-28-06 was also amended by section 4 of Senate Bill No. 2084, chapter 328.

3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses to practice dentistry or dental hygiene and the biennial certificates of registration upon any grounds authorized by this chapter or rules adopted by the board.

¹⁷⁰ **SECTION 4.** A new subsection to section 43-28-06 of the North Dakota Century Code is created and enacted as follows:

Enter an agreement with the same professional organization with which the state board of medical examiners has entered an agreement under subsection 6 of section 43-17-07.1.

SECTION 5. AMENDMENT. Section 43-28-10.1 of the North Dakota Century Code is amended and reenacted as follows:

43-28-10.1. Requirements for licensure.

The board may grant a license to practice dentistry to an applicant who has met all of the following requirements:

1. The applicant has a doctorate of dental surgery or doctorate of dental medicine degree from an accredited dental school.
2. The applicant has passed the examination administered by the joint commission on national dental examinations or the national dental examining board of Canada.
3. The applicant has passed a clinical competency examination administered by a regional dental testing service approved by the board by rule.
4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state ~~administered by the board at a meeting.~~
5. Grounds for denial of the application under section 43-28-18 do not exist.
6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 6. AMENDMENT. Subsection 3 of section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

3. For any person, except a ~~North Dakota licensed practicing~~ dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

Approved March 19, 2013
Filed March 19, 2013

¹⁷⁰ Section 43-28-06 was also amended by section 3 of Senate Bill No. 2084, chapter 328.

CHAPTER 329

SENATE BILL NO. 2116

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

AN ACT to amend and reenact section 43-29-02 of the North Dakota Century Code, relating to membership of the state board of veterinary medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-02 of the North Dakota Century Code is amended and reenacted as follows:

43-29-02. State board of veterinary medical examiners - Appointments - Qualifications - Terms - Vacancies.

1. ~~The state board of veterinary medical examiners consists of three five gubernatorially appointed members appointed by the governor for terms of three years each, with their terms of office so arranged that one term, and only one, expires each year. Members of the board shall hold their respective offices until their successors are appointed and qualified. Each member must be a reputable, practicing, and licensed veterinarian in North Dakota for five years immediately prior to the appointment, and must be the holder of a diploma or degree granted by a veterinary school, or by a college or university recognized by the board.~~

~~If any vacancy occurs on the board due to resignation, death, removal from the state, or suspension as herein provided, or for any other reason, the governor shall fill such vacancy. In appointing the board members, the governor shall appoint three veterinarians, one veterinarian technician, and one individual representing the public. In appointing the veterinarian members of the board, the governor shall make an effort to appoint:~~

- a. ~~One veterinarian whose practice has a predominant focus on large animals;~~
 - b. ~~One veterinarian whose practice has a predominant focus on small animals; and~~
 - c. ~~One veterinarian whose practice focuses on both large and small animals.~~
2. a. ~~Each veterinarian on the board must be licensed in this state and must have practiced in this state for at least five years immediately preceding the appointment.~~
 - b. ~~The veterinary technician on the board must be licensed in this state and must have practiced in this state for at least five years immediately preceding the appointment.~~

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- c. The individual representing the public:
- (1) Must be a resident of this state;
 - (2) Must have resided in this state for at least five years immediately preceding the appointment;
 - (3) May not be a veterinarian, a veterinary technician, or the spouse of a veterinarian or a veterinary technician;
 - (4) May not ever have been a veterinarian, a veterinary technician, or the spouse of a veterinarian or a veterinary technician; and
 - (5) May not have any direct financial interest in the provision of veterinary services and may not be engaged in any activity directly related to the veterinary profession.
3. a. The term of office for each member is three years. Terms must be staggered by lot so that no more than two terms expire each year. Each term of office begins on July first.
- b. Each member of the board shall hold office until a successor is appointed and qualified.
4. If at any time during a member's term, the member ceases to possess any of the qualifications provided in this section or if the member resigns, the member's office is deemed vacant and the governor shall appoint another qualified individual for the remainder of the term.
5. The governor may, after due notice and hearing, remove any member of the board of veterinary examiners for ~~misconduct, incapacity, or neglect of duty~~cause.

Approved April 12, 2013

Filed April 12, 2013

CHAPTER 330

HOUSE BILL NO. 1154

(Representatives Schmidt, Brabandt, Brandenburg, Rohr)
(Senators Larsen, Schaible)

AN ACT to amend and reenact section 43-36-10 of the North Dakota Century Code, relating to application requirements for registration as a professional soil classifier; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-36-10 of the North Dakota Century Code is amended and reenacted as follows:

43-36-10. General requirements for registration - Professional soil classifier.

To be eligible for registration as a professional soil classifier or certification as a soil classifier-in-training, an applicant must be of good character and reputation and shall submit a written application to the board containing such information as the board may require, together with ~~five~~three references, ~~three~~one of which must be ~~from a professional soil classifiers~~classifier having personal knowledge of the applicant's soil classifying experience; or in the case of an application for certification as a soil classifier-in-training, by three character references.

SECTION 2. PROFESSIONAL SOIL CLASSIFIERS - LEGISLATIVE MANAGEMENT STUDY. The legislative management shall consider studying those provisions of the North Dakota Century Code that relate to professional soil classifiers, including their qualifications and examinations, and the powers and duties of the state board of registration for professional soil classifiers, for the purpose of recommending changes to laws that are irrelevant, inconsistent, illogically arranged, or unclear in their intent and direction. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

Approved April 2, 2013
Filed April 2, 2013

CHAPTER 331

HOUSE BILL NO. 1092

(Human Services Committee)
(At the request of the Board of Examiners on
Audiology and Speech-Language Pathology)

AN ACT to create and enact a new section to chapter 43-37 of the North Dakota Century Code, relating to licensing out-of-state audiologists and speech-language pathologists; to amend and reenact section 43-37-04 and subsection 2 of section 43-37-05 of the North Dakota Century Code, relating to the licensing of audiologists and the composition of the board of examiners on audiology and speech-language pathology; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-37-04 of the North Dakota Century Code is amended and reenacted as follows:

43-37-04. Eligibility for licensure.

To be eligible for licensure by the board as an audiologist or speech-language pathologist, an applicant shall meet all the following requirements:

1. Be of good moral character.
2. Possess an appropriate degree from an educational institution recognized by the board.
 - a. An applicant for a speech-language pathologist license shall possess at least a master's degree in speech-language pathology.
 - b. An applicant for an audiologist license shall possess at least a master's or a doctorate degree in audiology.
3. Submit evidence showing qualifications prescribed by rules of the board.
4. Pass an examination approved by the board within one year of application. ~~The board may waive the examination requirement if the applicant presents proof of licensure in another state which has professional standards equivalent to those required by the board.~~
5. Pay the prescribed fee.

SECTION 2. A new section to chapter 43-37 of the North Dakota Century Code is created and enacted as follows:

Licensing of out-of-state practitioners.

1. The board may adopt rules establishing licensure requirements for applicants who hold a current license in good standing to practice as an audiologist or speech-language pathologist in a state or jurisdiction other than this state and

who are not the subject of a pending disciplinary action in any state or jurisdiction.

2. Notwithstanding section 43-37-04, as it relates to the licensure eligibility of an out-of-state audiologist or speech-language pathologist, the board's rules may allow for:
 - a. Waiver of the examination requirement if the applicant meets the requirements established by the board.
 - b. Consideration of education and experience in order to meet the education requirements.

SECTION 3. AMENDMENT. Subsection 2 of section 43-37-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The board must be composed of eight members appointed by the governor. Appointees must be residents of this state for at least one year immediately preceding their appointment and, except for the consumer member, must be engaged in rendering services to the public, in teaching, or in research in audiology or speech-language pathology for at least three years preceding their appointment. Two board members must be audiologists, ~~three~~four must be speech-language pathologists, one must be an otolaryngologist, ~~one must be a hearing aid specialist,~~ and one must be a consumer.

SECTION 4. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 2014.

Approved March 27, 2013
Filed March 27, 2013

CHAPTER 332

SENATE BILL NO. 2088

(Human Services Committee)

(At the request of the North Dakota Board of Athletic Trainers)

AN ACT to amend and reenact sections 43-39-05 and 43-39-08, subsection 3 of section 43-39-09, subsection 2 of section 43-39-10, and section 43-39-11 of the North Dakota Century Code, relating to athletic trainers; to repeal section 43-39-07 of the North Dakota Century Code, relating to grandfathering initial licensees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-39-05 of the North Dakota Century Code is amended and reenacted as follows:

43-39-05. Qualifications.

To be eligible for an athletic trainer license, an applicant must meet all the requirements of certification established by the ~~national athletic trainers association~~ board of certification, incorporated.

SECTION 2. AMENDMENT. Section 43-39-08 of the North Dakota Century Code is amended and reenacted as follows:

43-39-08. Examination required.

All license applicants must ~~pass~~ have previously passed the board of certification, incorporated, examination prescribed by the board unless they show proof of passage of a board-approved equivalent examination. The athletic trainer's examination must embrace such criteria as may be determined by the board.

SECTION 3. AMENDMENT. Subsection 3 of section 43-39-09 of the North Dakota Century Code is amended and reenacted as follows:

- ~~A previously licensed person who leaves the person's position of employment as an athletic trainer for any reason for one year or more and has requested license renewal must show continued education credits as established and approved by the board~~ have active status from the board of certification, incorporated.

SECTION 4. AMENDMENT. Subsection 2 of section 43-39-10 of the North Dakota Century Code is amended and reenacted as follows:

- Nothing in this chapter shall be construed to authorize the practice of medicine by any person. The provisions of this chapter do not apply to physicians licensed by the North Dakota state board of medical examiners; to dentists, duly qualified and registered under the laws of this state who confine their practice strictly to dentistry; to licensed optometrists who confine their practice strictly to optometry as defined by law; to licensed chiropractors who confine their practice strictly to chiropractic as defined by law; to occupational

therapists who confine their practice to occupational therapy; to nurses who practice nursing only; to duly licensed chiropodists or podiatrists who confine their practice strictly to chiropody or podiatry as defined by law; to registered physical therapists; to ~~masseurs or masseuses~~massage therapists in their particular sphere of labor; nor to commissioned or contract physicians or physical therapists or physical therapists' assistants in the United States army, navy, air force, marine corps, and public health and marine health service.

SECTION 5. AMENDMENT. Section 43-39-11 of the North Dakota Century Code is amended and reenacted as follows:

43-39-11. Penalty.

Any person violating any of the provisions of practicing as an athletic trainer without a license as required by this chapter is guilty of a class B misdemeanor.

SECTION 6. REPEAL. Section 43-39-07 of the North Dakota Century Code is repealed.

Approved March 19, 2013
Filed March 19, 2013

CHAPTER 333

HOUSE BILL NO. 1094

(Human Services Committee)
(At the request of the State Board of Respiratory Care)

AN ACT to amend and reenact sections 43-42-01, 43-42-03, 43-42-04, and 43-42-05 of the North Dakota Century Code, relating to respiratory care practitioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-42-01 of the North Dakota Century Code is amended and reenacted as follows:

43-42-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of respiratory care.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the commission on accreditation of ~~allied health educational programs~~respiratory care, or the commission's successor organization.
3. "Certification examination" means the entry level examination for respiratory therapists administered by the national board for respiratory care or its successor organization.
4. "Certified respiratory therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory therapist.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Polysomnography" means the practice of attending, monitoring, and recording physiologic data during sleep for the purpose of identifying and assisting in the treatment of sleep-wake disorders.
7. "Registered polysomnographic technologist" means an individual licensed by the board to practice polysomnography under supervision as prescribed by the board by rule.
8. "Registered respiratory therapist" means a person licensed by the board to practice respiratory care.
9. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
10. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities

of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, certified nurse practitioner, or physician's assistant and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and artificial airways, and insertion of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

11. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
12. "Respiratory therapy" means respiratory care.
13. ~~"Temporary respiratory therapist" means any individual who has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory therapist, or registered respiratory therapist.~~

SECTION 2. AMENDMENT. Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

43-42-03. Respiratory therapist and polysomnographic technologist licensing - Fees.

1. The board shall license as a registered respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a registered respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. The board shall establish fees not in excess of one hundred dollars for the issuance and renewal of a registered respiratory therapist license.
2. The board shall license as a certified respiratory therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of ~~seventy~~^{ninety} dollars for the issuance and renewal of a certified respiratory therapist license.
3. ~~The board shall license as a temporary respiratory therapist any applicant whom the board determines to be qualified to perform duties as a temporary respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of seventy dollars for the issuance of a temporary respiratory therapist license.~~
4. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules

adopted by the board under section 43-42-04.1. The board shall establish fees not in excess of ~~seventynine~~ninety dollars for issuance and for renewal of a registered polysomnographic technologist license.

- 5-4. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
- 6-5. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:
- Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, ~~a temporary respiratory therapist~~, or a registered polysomnographic technologist.
 - Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
 - Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, ~~temporary respiratory therapist~~, or registered polysomnographic technologist.
 - Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, ~~temporary respiratory therapist~~, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.
 - Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
- 7-6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.
- 8-7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board. ~~Temporary licenses may not be renewed.~~

- 9-8. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 3. AMENDMENT. Section 43-42-04 of the North Dakota Century Code is amended and reenacted as follows:

43-42-04. Respiratory care practice.

The practice of respiratory care may be performed in hospitals, as ambulatory or in-home care, and in other settings where respiratory care is provided in accordance with a prescription of a licensed physician, certified nurse practitioner, or physician's assistant. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances in which an epidemic or public disaster necessitates respiratory care. A person may not practice, nor represent that the person is able to practice, as a registered respiratory therapist without being licensed as a registered respiratory therapist, or as a certified respiratory therapist without being licensed as a certified respiratory therapist, in accordance with this chapter.

SECTION 4. AMENDMENT. Section 43-42-05 of the North Dakota Century Code is amended and reenacted as follows:

43-42-05. Application of chapter.

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory therapist and the person is identified as a "student respiratory therapist".
2. ~~A graduate of a bona fide respiratory care training program, who has applied for licensure under this chapter may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory therapist; provided, that the graduate holds a temporary respiratory therapist's license and is identified as a "graduate respiratory therapist". An applicant shall take the entry level certification examination within six months following eligibility. Failure to pass any examination that is taken results in termination of the privileges provided under this subsection.~~
3. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory therapists and certified respiratory therapists.
- 4-3. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory therapist or a certified respiratory therapist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory therapist or certified respiratory therapist.
- 5-4. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold out to be a registered or certified respiratory therapist.

- 6-5. This chapter does not prohibit a respiratory therapist from performing advances in the art or techniques of respiratory care learned through formal or specialized training.
- 7-6. This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

Approved March 27, 2013
Filed March 27, 2013

CHAPTER 334

SENATE BILL NO. 2083

(Human Services Committee)

(At the request of the North Dakota Board of Clinical Laboratory Practice)

AN ACT to create and enact three new subsections to section 43-48-03 of the North Dakota Century Code, relating to exemptions from clinical laboratory practice licensing requirements; to amend and reenact subsection 3 of section 43-48-05 of the North Dakota Century Code, relating to terms of North Dakota board of clinical laboratory practice members; and to repeal section 43-48-12 of the North Dakota Century Code, relating to clinical laboratory practice licensing grandfather provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 43-48-03 of the North Dakota Century Code are created and enacted as follows:

Perfusionists performing clinical laboratory tests for hematology, coagulation, and chemistry during the course of a patient's perfusion procedures.

Personnel of the division of laboratory services of the state department of health participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.

A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.

SECTION 2. AMENDMENT. Subsection 3 of section 43-48-05 of the North Dakota Century Code is amended and reenacted as follows:

3. The members of the board shall serve for terms of three years, ~~except that members of the first board must be appointed as provided in this chapter within sixty days after July 12, 1989, for the following terms:~~
 - a. ~~A nonphysician laboratory director member and a consumer member, each for a term of three years.~~
 - b. ~~A clinical laboratory technician member and clinical laboratory scientist member, each for a term of two years.~~
 - c. ~~A physician laboratory director member and a consumer member, each for a term of one year.~~
 - d. ~~The state officer member or such officer's designee must be appointed and serve ex officio during such term of office in the state department of health.~~

SECTION 3. REPEAL. Section 43-48-12 of the North Dakota Century Code is repealed.

Approved April 1, 2013
Filed April 1, 2013

CHAPTER 335

HOUSE BILL NO. 1246

(Representatives Meier, Becker, Grande, Rohr, Ruby, Steiner, Weisz)
(Senators Dever, J. Lee)

AN ACT to create and enact a new section to chapter 43-51 of the North Dakota Century Code, relating to occupational and professional licensure of military spouses; to amend and reenact section 43-51-01 of the North Dakota Century Code, relating to occupational and professional licensure of military spouses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-51-01 of the North Dakota Century Code is amended and reenacted as follows:

43-51-01. Definitions.

As used in this chapter, unless the context indicates otherwise:

1. "Board" means a board, commission, or other agency of state government created or identified in this title to regulate a particular occupation or profession, ~~except for the:~~
 - a. ~~The term does not include the:~~
 - (1) State board of accountancy;
 - ~~b.(2)~~ State electrical board;
 - ~~e.(3)~~ North Dakota real estate appraiser qualifications and ethics board;
 - ~~d.(4)~~ State real estate commission;
 - ~~e.(5)~~ Secretary of state with respect to contractor licensing;
 - ~~f.(6)~~ State board of medical examiners; and
 - ~~g.(7)~~ State board of dental examiners.
 - b. "Board" also includes any agency of state government which is created or identified outside this title to regulate a particular occupation or profession if the agency elects, by administrative rule, to invoke the authority in this chapter.
2. "Foreign practitioner" means an individual who currently holds and maintains a license in good standing to engage in an occupation or profession in a state or jurisdiction other than this state and who is not the subject of a pending disciplinary action in any state or jurisdiction.

3. "Good standing" means a foreign practitioner holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked.
4. "License" means a license, certificate, permit, or similar authorization to practice an occupation or profession which is issued by a government agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state to obtain and maintain a license to practice the same profession or occupation.
5. "Military spouse" means a foreign practitioner who is the spouse of a member of the armed forces of the United States or a reserve component of the armed forces of the United States stationed in this state in accordance with military orders or stationed in this state before a temporary assignment to duties outside of this state.
6. "Occupation or profession" means activity for which a license is required from a board or similar activity for which a license is required in another state or jurisdiction.

SECTION 2. A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

Military spouses - Licensure.

1. A board shall adopt rules regarding licensure of a military spouse and shall grant on a case-by-case basis exceptions to the board's licensing standards to allow a military spouse to practice the occupation or profession in the state if upon application to the board:
 - a. The military spouse demonstrates competency in the occupation or profession through methods or standards determined by the board which must include experience in the occupation or profession for at least two of the four years preceding the date of application under this section;
 - b. The military spouse pays any fees required by the board from which the applicant is seeking a license; and
 - c. The board determines the exception will not substantially increase the risk of harm to the public.
2. Under subsection 1, a board may issue a provisional license or temporary permit to a military spouse for which one or more of the licensure requirements have not been met. A provisional license or temporary permit issued under this subsection remains valid while the military spouse is making progress toward satisfying the necessary unmet licensure requirements. A military spouse may practice under a provisional license or temporary permit issued under this subsection until any of the following occurs:
 - a. The board grants or denies the military spouse a North Dakota license under subsection 1 or grants a North Dakota license under the traditional licensure method;
 - b. The provisional license or temporary permit expires; or

- c. The military spouse fails to comply with the terms of the provisional license or temporary permit.
3. A board that is exempted from this chapter under subdivision a of subsection 1 of section 43-51-01 may issue a license, provisional license, or temporary permit to a military spouse in the same manner as provided under subsections 1 and 2. A board that may elect to subject the board to this chapter under subdivision b of subsection 1 of section 43-51-01 may issue a license, provisional license, or temporary permit to a military spouse in the same manner as provided under subsections 1 and 2 regardless of whether the board has adopted rules to subject the board to this chapter. The state board of architecture and landscape architecture is exempt from the mandate in subsection 1; however, the board voluntarily may issue a license, provisional license, or temporary permit under subsections 1 and 2.
4. A military spouse issued a license under this section has the same rights and duties as a licensee issued a license under the traditional licensure method.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2013
Filed April 11, 2013

CHAPTER 336

SENATE BILL NO. 2131

(Senators J. Lee, Berry, Mathern)
(Representatives Hofstad, Weisz, Hogan)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to genetic counseling; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definitions.

In this chapter:

1. "ABGC" means the American board of genetic counseling.
2. "ABMG" means the American board of medical genetics.
3. "Board" means the state board of medical examiners.
4. "Genetic counseling" means a communication process, conducted by appropriately trained individuals which includes:
 - a. Assisting an individual, the individual's family, a health care provider, or the public with comprehending the issues inherent to genetic counseling. Such assistance may include:
 - (1) Appreciating the medical, psychological, and social implications of a disorder, including features, variability, usual course, and management options;
 - (2) Learning how genetic factors contribute to the disorder and affect the chance for recurrence of the condition in other family members;
 - (3) Understanding available options for coping with, preventing, or reducing the chance of occurrence or recurrence of a condition;
 - (4) Selecting the most appropriate, accurate, and cost-effective methods to determine risk for genetic conditions and diseases; and
 - (5) Understanding genetic tests, including diagnostic genetic tests, screening tests, or predispositional genetic tests; coordinating testing for inherited disorders; and explaining complex genetic test results;
 - b. Assessing the likelihood of the occurrence or recurrence of an abnormality in the pregnancy in structure, function, or metabolism or of any potentially inherited or genetically influenced condition. Such assessment may include the following:

- (1) Obtaining and analyzing a complete health history of an individual and the individual's family;
 - (2) Reviewing pertinent medical records;
 - (3) Evaluating the risks from exposure to possible mutagens or teratogens; and
 - (4) Discussing genetic testing or other evaluations to identify a condition or determine the carrier status of one or more family members; and
- c. Facilitating an individual's or family's:
- (1) Exploration of the perception of risk and burden associated with a genetic disorder;
 - (2) Decisionmaking regarding testing or medical interventions consistent with the individual's or family's beliefs, goals, needs, or resources or with the individual's or family's cultural, ethical, or moral views; and
 - (3) Adjustment and adaptation to the condition or the genetic risk by addressing needs for psychological, social, and medical support.
5. "Genetic counselor" means an individual licensed under this chapter to engage in the practice of genetic counseling.
6. "Supervision" means ongoing direct clinical review for the purposes of training or teaching, by a supervisor approved by the board who monitors the performance or an individual's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the supervised individual. This supervision may be by personal contact or indirect contact by telecommunication.

Practice of genetic counseling - Exemptions.

1. A person may not engage in the practice of genetic counseling, act or represent to be a genetic counselor, or use such titles as genetic counselor, licensed genetic counselor, gene counselor, genetic associate, or any words, letters, abbreviations, or insignia, such as certified genetic counselor or CGC, indicating or implying that person is a genetic counselor, unless the person is an individual who holds a license or temporary license issued by the board under this chapter and otherwise complies with the provisions of this chapter. An individual who is exempt from the licensure requirements of this chapter may not use a title indicating or implying the individual is a genetic counselor.
2. Genetic testing may be provided by a licensed genetic counselor only when ordered by a North Dakota licensed health care provider acting within the provider's scope of practice and privileged to do so. The referring or primary provider shall maintain supervision of patient care and the licensed genetic counselor shall provide reports to the referring or primary health care provider ordering such testing.
3. The following individuals may engage in the practice of genetic counseling without being licensed under this chapter:

- a. A licensed health care professional practicing within the professional's scope of practice;
- b. A student or intern from a board-recognized school;
- c. An individual trained as a Ph.D. medical geneticist;
- d. A consultant from another state who is board-certified by the ABGC or the ABMG, for the limited purpose of consulting with a genetic counselor;
- e. An employee of the state department of health in the provision of education regarding single gene conditions, including sickle cell, cystic fibrosis, and hemoglobinopathies; and
- f. An individual acting within the scope of religious ministerial duties.

Application for licensure.

1. An applicant for licensure under this chapter shall pay any filing fee and file an application, on forms provided by the board, to the satisfaction of the board that the applicant is of good moral character and satisfies all of the requirements of this chapter, including:
 - a. Education at one of the following levels:
 - (1) Master of science degree from a genetic counseling training program that is accredited by the ABGC or an ABGC-approved equivalent organization and approved by the board; or
 - (2) Doctoral degree from a medical genetics training program that is accredited by the ABMG and approved by the board; and
 - b. Successful completion of all requirements of the certification examination within a period not to exceed four years from initial examination to successful completion and with no more than three attempts;
 - c. Physical, mental, and professional capability for the practice of genetic counseling in a manner acceptable to the board; and
 - d. A history free of any finding by the board, by any other state licensing board, or by any court of competent jurisdiction which would constitute grounds for disciplinary action under this chapter. The board may modify this restriction for cause.
2. In compliance with chapter 43-17, the board may refuse to grant a license under this chapter if any of the license requirements are not met.

Temporary license.

1. The board may issue a temporary license to an applicant who pays the temporary license fee and meets all the qualifications for licensure, except the successful completion of the certification examination if the applicant submits evidence to the board that the applicant is a candidate accepted to write the certification examination.

2. A temporary licensee shall take the certification examination within eighteen months of obtaining the temporary license. If a temporary licensee fails the first sitting of the certification examination or the temporary license expires, the temporary licensee may reapply for another temporary license. A temporary license may not be issued or reissued if the applicant failed the certification examination three times.
3. A temporary license expires on the occurrence of the following:
 - a. Issuance of a regular license;
 - b. Failure to pass the board-approved examination; or
 - c. Expiration of the term for which the temporary license was issued.
4. A temporary licensee's practice is limited to practice under the supervision of a licensed genetic counselor or under the supervision of a physician approved by the board if that physician has a current ABMG certification in clinical genetics.

License renewal.

A license issued under this chapter must be renewed annually on a date designated by the board. The board shall renew a license upon payment of the renewal fee, submission of a renewal application in a form approved by the board, and submission of evidence satisfactory to the board of the applicant's current certification by the ABGC or ABMG.

Board duties.

The board shall adopt rules pertaining to fees, licensure, investigations, and disciplinary proceedings.

Disciplinary actions.

1. The board may cancel, revoke, suspend, or restrict the license of a genetic counselor; may issue public reprimands; and may issue fines, not to exceed one thousand dollars, if the board is satisfied by proof by a preponderance of the evidence, in compliance with chapter 43-17, of any of the following grounds for disciplinary action:
 - a. The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the licensing requirements.
 - b. The making of false or misleading statements by a genetic counselor about the counselor's skill.
 - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the genetic counselor's ability to serve the public as a practitioner of genetic counseling.
 - d. The conviction of a felony, if the requirements of section 12.1-33-02.1 are met.
 - e. Habitual use of alcohol or drugs.

- f. Physical or mental disability materially affecting the ability to perform the duties of a genetic counselor in a competent manner.
 - g. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
 - h. Obtaining any fee by fraud, deceit, or misrepresentation.
 - i. Aiding or abetting the practice of genetic counseling by an unlicensed, incompetent, or impaired person.
 - j. The violation of any provision of this chapter or the rules adopted by the board or the violation of any action, stipulation, condition, or agreement imposed by the board or the board's investigative panels.
 - k. The practice of genetic counseling under a false or assumed name.
 - l. The advertising for the practice of genetic counseling in an untrue or deceptive manner.
 - m. The willful or negligent violation of the confidentiality between genetic counselor and patient, except as required by law.
 - n. Gross negligence in the practice of genetic counseling.
 - o. Sexual abuse, misconduct, or exploitation related to the genetic counselor's practice of genetic counseling.
 - p. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of genetic counseling.
 - q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice genetic counseling based upon acts or conduct by the genetic counselor which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
 - r. The failure to furnish the board or the board's investigative panel or the board's or investigative panel's investigators or representatives information legally requested by the board or the investigative panel.
2. The board shall keep a record of all the board's proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.
 3. The board shall deposit in the general fund any fines collected under this section.

Reinstatement and renewal.

Upon application, the board may reinstate or renew a license of an applicant whose license has been canceled, suspended, or revoked. The board may establish the protocol for reinstatement and renewal under this section and may impose conditions for reinstatement and renewal.

Genetic counselor advisory committee.

1. The board shall appoint a genetic counselor advisory committee composed of at least one genetic counselor and at least two physicians licensed under chapter 43-17. Except for initial appointments, each committee member shall serve a term of three years. The term of initial appointees must be staggered so that expiration of terms is evenly distributed. A committee member may not be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint an individual to fill the unexpired term.
2. The advisory committee shall meet as necessary to conduct business, but at least annually. The advisory committee shall make recommendations to the board regarding board rules adopted under this chapter.

Penalty.

It is a class B misdemeanor to knowingly violate this chapter.

Approved April 26, 2013
Filed April 26, 2013