

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 285

### HOUSE BILL NO. 1148

(Representatives Keiser, Beadle)  
(Senator Klein)

AN ACT to amend and reenact sections 43-01-15.1 and 43-01-18 of the North Dakota Century Code, relating to fees charged by abstractors.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request - Zoning and subdivision exclusion upon request.**

An abstractor shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstractor shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstractor may charge a fee of ~~one dollar and fifty cents, and no more~~ not to exceed three dollars. When requested to do so, an abstractor shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted. Further, when requested to do so, an abstractor shall omit zoning and subdivision ordinances but shall note and exclude them from the abstract of title. An abstractor may charge a per entry fee under section 43-01-18 for each omitted zoning and subdivision ordinance.

**SECTION 2. AMENDMENT.** Section 43-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-18. Fees chargeable by abstractor.**

An abstractor may charge no more than the following fees for making and certifying to an abstract:

1. For each entry on an abstract or continuation of an entry on an abstract, ~~ten~~fifteen dollars.
2. For a complete certification covering the records of the several county offices, one hundred fifty dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title and for each quarter section [64.75 hectares] or portion of a quarter section in excess of one, an additional fee of ~~ten~~fifteen dollars.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title and for the premises in each additional block in excess of one, an additional fee of ~~ten~~fifteen dollars.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, and state tax liens, ~~five~~ten dollars and fees charged to the abstractor by a governmental agency or governmental entity.
6. The fees as may be fixed by special statute.

Approved March 26, 2015

Filed March 26, 2015

## CHAPTER 286

### SENATE BILL NO. 2128

(Government and Veterans Affairs Committee)  
(At the request of the North Dakota Board of Podiatric Medicine)

AN ACT to amend and reenact subsection 5 of section 43-05-01 of the North Dakota Century Code, relating to the definition of podiatric medicine.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 5 of section 43-05-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~"Podiatric medicine" means the profession of the health services concerned with the diagnosis and treatment of conditions affecting the human foot and ankle including local manifestations of systemic conditions by all appropriate systems and means and includes the prescribing or administering of drugs or medications necessary or helpful to that profession.;~~
  - a. The medical and surgical treatment and diagnosis of ailments of the human foot, ankle, and other related soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle, not including extra articular osseous injuries above the distal metaphyseal scar. Podiatrists may treat and diagnose conditions of the foot and ankle by any medically accepted system or method necessary;
  - b. The amputation of the toes, parts of the foot, or foot in its entirety, indicated as medically necessary;
  - c. The use of such preparations, medicines, and drugs as may be necessary for the treatment of such ailments;
  - d. The performance of history and physical examinations upon admitting patients to facilities where they are recognized with requisite credentials and privileges;
  - e. That podiatrists may function as assistant surgeons in nonpodiatric procedures; and
  - f. That podiatric medical residents working under a temporary permit may fully participate in rotations and assist and perform treatments and diagnosis beyond the foot and ankle, under appropriate supervision within an approved residency program as part of their medical surgical training.

Approved March 19, 2015  
Filed March 19, 2015

## CHAPTER 287

### SENATE BILL NO. 2067

(Industry, Business and Labor Committee)  
(At the request of the North Dakota Board of Podiatric Medicine)

AN ACT to amend and reenact sections 43-05-15 and 43-05-16.8 of the North Dakota Century Code, relating to podiatrist license renewal.

#### 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~~seven hundred fifty 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 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 43-05-16.8 of the North Dakota Century Code is amended and reenacted as follows:

**43-05-16.8. Loan for litigation expenses.**

Subject to approval by the emergency commission, the board may borrow funds sufficient to pay for attorney's fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. Notwithstanding section 43-05-15, the board may establish an annual renewal license fee for each year following the issuance of a loan under this section, and the fee must be maintained until the loan is fully repaid, including any accrued interest. The amount of the annual renewal license fee assessed under this section may not exceed one thousand five hundred dollars. Once the loan is paid in full, the annual renewal license fee must revert to the amount established by the board before the issuance of the loan. The notice of a proposed rule to assess the fee in this section or revert to the previous license fee may be sent by certified mail to each individual licensed by the board in lieu of the publication requirements for the notice in chapter 28-32.

Approved March 18, 2015  
Filed March 18, 2015

## CHAPTER 288

### HOUSE BILL NO. 1098

(Industry, Business and Labor Committee)  
(At the request of the North Dakota Board of Podiatric Medicine)

AN ACT to amend and reenact section 43-05-16.3 of the North Dakota Century Code, relating to the powers of the North Dakota board of podiatric medicine.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-05-16.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-05-16.3. ~~Subpoena power~~Powers of the board - 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.
3. The board may subpoena witnesses relating to the practice of any podiatrist under investigation.
4. The board may employ independent investigators when necessary.
5. The board may hold confidential conferences with any complainant or podiatrist with respect to any complaint.
6. If the board determines a violation of section 43-05-16 may have occurred, the board may issue a formal complaint against a licensed podiatrist.

Approved March 25, 2015  
Filed March 25, 2015

## CHAPTER 289

### HOUSE BILL NO. 1099

(Industry, Business and Labor Committee)  
(At the request of the State Board of Chiropractic Examiners)

AN ACT to create and enact section 43-06-17.1 of the North Dakota Century Code, relating to temporary suspension and appeal of chiropractors; and to amend and reenact subdivision a of subsection 2 of section 43-06-01, section 43-06-02, subsections 2 and 5 of section 43-06-04.1, sections 43-06-05, 43-06-08, 43-06-09, 43-06-10.1, 43-06-13, and 43-06-14.1, subdivision g of subsection 1 of section 43-06-15, and subsections 4 and 5 of section 43-06-15 of the North Dakota Century Code, relating to the practice of chiropractic.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 43-06-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. The examination, evaluation, and diagnosis by means including x-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor or equivalent;

**SECTION 2. AMENDMENT.** Section 43-06-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-06-02. Who exempt from the provisions of this chapter.**

This chapter does not apply to:

1. Chiropractors from the District of Columbia, or other states, territories, or countries who are in actual consultation in this state.
2. Students duly enrolled in a college of chiropractic approved and accredited by the council on chiropractic education, or its successor or equivalent, who have completed chiropractic studies and who are continuing their training under a preceptorship program and performing the duties of an intern under the supervision of a chiropractor licensed in the state of North Dakota who has received approval to supervise such internship by the board and said students having received approval to participate in such internship by the board and by the chiropractic college or university.
3. A graduate of any approved and accredited college of chiropractic who has for the first time made application for license by examination to practice chiropractic in the state of North Dakota, and who, under the supervision of a North Dakota licensed chiropractor, performs the duties of an intern, provided that a supervising chiropractor has certified to the board that the graduate is of good character and competent chiropractic ability. The authorization granted by the board terminates within fifteen months from the date issued by the board.

4. Nothing in this chapter is to be construed to impinge upon the practice of medicine by a physician and surgeon or an osteopathic physician and surgeon who has adequate training in the use of manipulative and adjustive procedures of the spine and appendicular skeleton.
5. A chiropractor who is licensed in another jurisdiction of the United States or credentialed to practice chiropractic in another country if that chiropractor is teaching, demonstrating, or providing chiropractic in connection with teaching or participating in an educational seminar in the state for no more than sixty days in a calendar year.

**SECTION 3. AMENDMENT.** Subsections 2 and 5 of section 43-06-04.1 of the North Dakota Century Code are amended and reenacted as follows:

2. The board shall ~~pass upon~~ verify the qualifications of applicants for licenses to practice chiropractic. It shall examine and renew the licenses of duly qualified applicants.
5. The board may inspect upon ~~complaint or~~ probable cause, at all reasonable times, any chiropractic office or place where chiropractic services are performed.

**SECTION 4. AMENDMENT.** Section 43-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-05. Meetings of board - When held - Place of meeting - Quorum - Officers - Seal - Compensation - Expenses - How paid.**

The board shall hold regular meetings ~~for the examination of applicants~~ twice yearly at approximate six-month intervals and such special meetings as it may deem necessary. The meetings shall be held at such places as the board may designate. Three members of the board constitute a quorum. At the first meeting of the board of each calendar year, the members of the board shall elect from their membership a president, vice president, and secretary-treasurer. Each shall hold office for one year and until a successor is elected and qualified. The board shall have a seal and may adopt appropriate rules necessary to carry out the provisions of this chapter. A member of the board shall receive compensation in an amount to be fixed by regulation of the board for each day or portion thereof spent in the discharge of duties, such mileage as is provided by section 54-06-09, and must be reimbursed for actual and necessary expenses incurred in the discharge of official duties in accordance with section 44-08-04. In addition to the compensation, expenses, and mileage, the secretary-treasurer of the board ~~shall~~ is entitled to receive such salary as must be fixed by a resolution of the board adopted at a regular meeting.

**SECTION 5. 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 equivalent, 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 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 6. AMENDMENT.** Section 43-06-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-09. Chiropractor - Qualifications.**

An applicant for examination to practice chiropractic in this state shall have a degree or a certificate proving enrollment in the last trimester of college received from an approved and accredited college of chiropractic. An approved and accredited college of chiropractic within the meaning of this chapter is a college of chiropractic that is approved by the board and accredited by the council on chiropractic education or its successor or equivalent.

**SECTION 7. AMENDMENT.** Section 43-06-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-10.1. National board examination.**

The board may in its discretion accept all parts of the national board examination in lieu of part of an examination for a license, providing all other requirements are met ~~but shall require examination in chiropractic jurisprudence and practical examinations.~~

**SECTION 8. 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 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 or equivalent, 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~~ an 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.

**SECTION 9. AMENDMENT.** Section 43-06-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-14.1. Peer review of services and fees.**

1. ~~The board, upon receipt of an inquiry from a patient, a third-party payer, including any governmental agency, or a chiropractor as to whether a chiropractor licensed in this state properly utilized services and rendered or ordered appropriate treatment or services and whether the cost of the treatment was unconscionable for a particular patient~~ a complaint, may appoint a peer review committee for the purpose of investigation of the matter and rendering an opinion thereon.
2. The peer review committee must be appointed by the board and function as its agent and may consist of different individuals for review of different cases.
3. The peer review committee shall investigate each inquiry submitted by the board. It shall examine such witnesses, review such patient and business records, and otherwise take whatever action is necessary to best ascertain the facts. It shall transmit all information it possesses to the board and shall report its findings to the board. The board shall furnish copies of the findings to the ~~patient, party making the complaint and to the chiropractor, and third-party payer. The finding of the peer review committee on each inquiry must include a determination of whether the chiropractor properly utilized services and rendered or ordered appropriate treatment or services and whether the cost of the treatment was unconscionable.~~
4. The determinations of the peer review committee must be presumed valid and may be considered as prima facie evidence in any further proceedings by the board.
5. ~~The acceptance of, or the request~~provision of, payment for treatment rendered to a patient by a chiropractor constitutes the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment to the board or peer review committee.
6. The board may adopt rules it considers necessary and appropriate to implement the peer review system and activities established under this chapter.
7. All data and information, including patient records acquired by the board or the peer review committee, in the exercise of its duties and functions, are confidential and closed to the public. All board and peer review committee meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public.
8. ~~Any third-party payer~~Except a patient, any party, including any governmental agency, making a request under this section may be charged a fee by the board equal to the administration costs of performing the review.

<sup>161</sup> **SECTION 10. AMENDMENT.** Subdivision g of subsection 1 of section 43-06-15 of the North Dakota Century Code is amended and reenacted as follows:

- g. Has been aided, assisted, or enabled any unlicensed person to practice chiropractic contrary to this chapter or rule of the board.

<sup>162</sup> **SECTION 11. AMENDMENT.** Subsections 4 and 5 of section 43-06-15 of the North Dakota Century Code are amended and reenacted as follows:

4. A doctor of chiropractic who is the subject of an investigation by, or on behalf of, the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by, or on behalf of, the board relating to the subject of the investigation and providing copies of patient health records, ~~as reasonably or any pertinent information~~ requested by the board, to assist the board in its investigation.
5. Any person, including a member of the board, may file a ~~sworn~~ signed written statement and other reports and information with any member of the board against a licensed chiropractor charging the chiropractor with any of the offenses or conditions set forth in subsection 1, which statement must set forth a specification of the charges. When the statement has been filed, the board shall make an investigation as provided by subsection 6.

**SECTION 12.** Section 43-06-17.1 of the North Dakota Century Code is created and enacted as follows:

**43-06-17.1. Temporary suspension - Appeal.**

1. If based on verified evidence the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the chiropractor would create significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the chiropractor's license is required to reasonably protect the public from the risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension of the chiropractor, which must include a copy of the order and complaint, the date set for a full hearing, and, upon request, a specific description of the nature of the evidence, including a list of all known witnesses and a specific description of any documents relied upon by the board in ordering the temporary suspension must be made available to the chiropractor.
2. An ex parte suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, will be taken against the chiropractor who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension

<sup>161</sup> Section 43-06-15 was also amended by section 11 of House Bill No. 1099, chapter 289.

<sup>162</sup> Section 43-06-15 was also amended by section 10 of House Bill No. 1099, chapter 289.

order. The chiropractor is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.

4. The chiropractor may appeal the ex parte temporary suspension order before the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record as defined in section 44-04-17.1.

Approved March 20, 2015  
Filed March 20, 2015

## CHAPTER 290

### SENATE BILL NO. 2188

(Senators Klein, Luick, Oehlke)  
(Representatives Louser, Monson, Schreiber Beck)

AN ACT to amend and reenact section 43-07-02 and subsection 3 of section 43-07-10 of the North Dakota Century Code, relating to providing penalties for operating without a contractor's license and committing construction fraud; to repeal section 43-07-18 of the North Dakota Century Code, relating to the penalty for operating without a contractor's license; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-07-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-07-02. License required - Construction fraud - Penalty.**

1. A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of ~~two~~four thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.
2. Any person acting in the capacity of a contractor without a license is guilty of a class A misdemeanor. Regardless of whether a person is subjected to criminal prosecution under this subsection, and in addition to the license fee that may be assessed when the person applies for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04.
3. A person commits construction fraud if:
  - a. The person receives payment for a construction project by intentionally using deception as defined in section 12.1-23-10.
  - b. The person receives payment for the purchase of materials or supplies and willfully fails to pay the supplier for the goods received.
  - c. The person willfully abandons a construction project after receiving payment for services or materials. Abandonment under this subdivision arises if:
    - (1) A contractor fails substantially to commence any work agreed upon:

- (a) Within sixty days of a starting date agreed upon in writing; or
- (b) Within ninety days of the contract date if no starting date is agreed upon in writing; or
- (2) A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, or within one hundred eighty days of the contract date if no completion date is agreed upon in writing.
4. It is a defense to prosecution under subsection 3 if:
- a. The person returned all of the payment received for work not performed or materials not supplied. If the person provided materials to the jobsite but did not pay suppliers for those materials, this defense does not apply. This defense is only valid if the payment was provided before criminal charges were filed.
  - b. The person had a legitimate legal excuse for nonperformance.
  - c. The person was not able to begin or complete the project because there were factors outside of the person's control and the person made substantial efforts to resolve any dispute.
5. The grade of the offense for violating subsection 3 is based on the amount of payment received. Payment of under ten thousand dollars is a class C felony; more than ten thousand dollars but not more than fifty thousand dollars is a class B felony; and more than fifty thousand dollars is a class A felony.

<sup>163</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

3. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of ~~sections~~section 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The

<sup>163</sup> Section 43-07-10 was also amended by section 5 of Senate Bill No. 2278, chapter 291.

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registrar may destroy all renewals provided for in this section after they have been on file for six years.

**SECTION 3. REPEAL.** Section 43-07-18 of the North Dakota Century Code is repealed.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 15, 2015

Filed April 15, 2015

## CHAPTER 291

### SENATE BILL NO. 2278

(Senators Poolman, Luick)  
(Representatives Devlin, Ruby, Sukut)

AN ACT to amend and reenact sections 43-07-04, 43-07-04.1, 43-07-07, 43-07-09, 43-07-10, and 43-07-15 of the North Dakota Century Code, relating to contractor licensing and fees; to repeal section 43-07-05 of the North Dakota Century Code, relating to contractor license fees; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-07-04. License - How obtained - Failure to grant - Revocation for not in good standing.**

1. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of liability insurance must be filed with the application and the contractor shall submit a statement from North Dakota workforce safety and insurance that the contractor has secured workforce safety and insurance coverage satisfactory to workforce safety and insurance. If the registrar deems it appropriate or necessary, the registrar may also require any other information to assist the registrar in determining the applicant's fitness/eligibility to act in the capacity of a contractor, including, at the expense of the applicant, criminal history record information of the applicant or the officers, members, or partners of the applicant which is held or maintained by the bureau of criminal investigation or a similar entity in another state. The application must contain a statement that the applicant desires the issuance of a license under this chapter and must specify the class of license sought.
2. The registrar may refuse to grant a license if the registrar determines the application contains ~~false, misleading, or incomplete information;~~ or the applicant fails or refuses to authorize or pay for criminal history information requested by the registrar; ~~or as otherwise provided in sections 12-1-33-02.1 and 43-07-04.1.~~ The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:

- a. Maintain liability insurance coverage required by this section or by section 43-07-10;
  - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
  - c. Maintain an active status of a corporation or registration as a foreign corporation;
  - d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
  - e. File or renew a trade name registration as required by chapter 47-25;
  - f. Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
  - g. Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.
4. Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

**SECTION 2. AMENDMENT.** Section 43-07-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-04.1. Conviction not bar to licensure -- Exceptions Denial, suspension, or revocation of license - Eligibility.**

Conviction

1. The registrar may deny any application for license, deny any application for renewal of license, or suspend or revoke any license, based on the applicant's or licensee's lack of eligibility to act in the capacity of a contractor, upon proof of one or more of the following:
  - a. The application for a license contains false or misleading information;
  - b. The applicant or licensee has been convicted of an offense that has direct bearing upon the applicant's or licensee's ability to serve the public as a contractor; or
  - c. The licensee or applicant has engaged in conduct as a contractor which is dishonest or fraudulent and which the registrar finds injurious to the welfare of the public.
2. Notwithstanding subdivision b of subsection 1, conviction of an offense does not disqualifymake a person fromineligible for licensure under this chapter unless the secretary of state determines that the offense has a direct bearing upon a person's ability to serve the public as a contractor or that, following

conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

3. Any applicant denied a license or denied renewal of a license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
4. Section 43-07-15 applies to any decision by the registrar to revoke or suspend a license.

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

**43-07-07. Classes of licenses - License fees - License renewal fees.**

At the time of making application

1. Four classes of licenses may be issued under this chapter, which must be designated as class A, B, C, and D licenses. A holder of a license may engage in the contracting business within this state subject to the following limitations:
  - a. The holder of a class A license is subject to no limitation as to the value of any single contract project.
  - b. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of five hundred thousand dollars.
  - c. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of three hundred thousand dollars.
  - d. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred thousand dollars.
2. When applying for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:
  - 1-a. For a class A license, the sum of ~~three~~four hundred ~~fifty~~ dollars.
  - 2-b. For a class B license, the sum of ~~two~~three hundred dollars.
  - 3-c. For a class C license, the sum of ~~one~~two hundred ~~fifty~~twenty-five dollars.
  - 4-d. For a class D license, the sum of ~~forty~~one hundred dollars.
3. For a certificate of renewal for a license, the licensee shall pay to the registrar the following fees:
  - a. For a class A license, the sum of ninety dollars.
  - b. For a class B license, the sum of sixty dollars.
  - c. For a class C license, the sum of forty-five dollars.

d. For a class D license, the sum of thirty dollars.

4. All Twenty-five percent of all moneys collected by the registrar under this chapter must be deposited by the registrar in the secretary of state's general services operating fund to pay the cost to administer this chapter and the balance of the moneys collected must be deposited with the state treasurer, who shall credit them to the general fund of the state.

**SECTION 4. AMENDMENT.** Section 43-07-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-09. Duty of registrar - Expiration of license.**

Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitnesseligibility to act in the capacity of a contractor as defined in this chapter provided in section 43-07-04.1, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

<sup>164</sup> **SECTION 5. AMENDMENT.** Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.**

1. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application that includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars and the nature of the work of each project, contract, or subcontract. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance naming the secretary of state as the certificate holder unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.
2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal

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<sup>164</sup> Section 43-07-10 was also amended by section 2 of Senate Bill No. 2188, chapter 290.

the decision to the district court of the applicant's county of residence or Burleigh County.

3. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar ~~at the~~ renewal fee equal to ~~twenty percent of the license fee~~ established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of ~~seventy-five percent of the renewal fee~~ fifty dollars, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after they have been on file for six years.

**SECTION 6. AMENDMENT.** Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-15. ~~Revocation Procedure for revocation or suspension of license - Restitution - Civil penalties - Appeal - Procedure.~~**

The registrar shall review each complaint filed under section 43-07-14. If the registrar determines a written complaint filed under section 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar determines that the licensee is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the registrar may suspend or revoke the contractor's license, order a civil penalty of not more than one thousand dollars, order restitution in an amount not more than five thousand dollars, or impose some lesser sanction or remedy. The registrar may suspend the contractor's license for a period of not more than sixty months. The registrar may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed under this section. The registrar may bring an action in district court to recover restitution or penalties under this section. A contractor aggrieved by a decision of the registrar in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court of that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of revocation or suspension. A "licensee" whose license is revoked or suspended includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings ~~hereunder~~ under this section.

**SECTION 7. REPEAL.** Section 43-07-05 of the North Dakota Century Code is repealed.

**SECTION 8. EMERGENCY.** Section 2 of this Act is declared to be an emergency measure.

Approved April 16, 2015  
Filed April 16, 2015

## CHAPTER 292

### HOUSE BILL NO. 1229

(Representatives B. Koppelman, Froseth, Karls, Kasper, Keiser, Rohr)  
(Senators Campbell, Dever, Klein, Poolman)

AN ACT to amend and reenact sections 43-09-09.2 and 43-09-14 of the North Dakota Century Code, relating to contracting for electrical services and undertaking for electricians contracting for electrical installations; to repeal section 43-09-14 of the North Dakota Century Code, relating to the electricians special fund; to provide a penalty; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-09-09.2 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-09-09.2. Advertising prohibited - Exceptions - Liability - Penalty.**

1. Except as provided in this section, if an electrical license is required under section 43-09-09 or by local ordinance, ~~no~~ person may ~~not~~ advertise to contract for electrical services without being licensed as or being associated with a class B or master electrician unless that person intends to contract the electrical services with a licensed electrical contractor.
2. If a person associates with a class B or master electrician under subsection 1 and that association ends, that person is jointly and severally liable for any electrical services contracts entered under that association.
3. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.  
b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
  - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
  - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars, or imprisonment not to exceed thirty days, or both, may be imposed.

<sup>165</sup> **SECTION 2. AMENDMENT.** Section 43-09-14 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-09-14. Master electrician and class B electrician - Undertaking - Fund.**

~~Before entering into a contract agreement or undertaking with another for the installation of electrical wiring or installation of electrical parts of other apparatus, a~~

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<sup>165</sup> Section 43-09-14 was repealed by section 3 of House Bill No. 1229, chapter 292.

~~master electrician or a class B electrician shall execute and deposit with the board an undertaking in the sum of five thousand dollars for a master electrician or four thousand dollars for a class B electrician conditioned on the faithful performance of all electrical work undertaken by the electrician, on strict compliance with the provisions of this chapter, and on the requirements of the board. In addition, a deposit must be made with the board in the amount of fifty dollars by a master electrician and in the amount of forty dollars by a class B electrician, in lieu of a surety bond. The deposit so made must be accumulated by the board in The board shall administer a special fund to be used for the completion of installations abandoned by master electricians referred to in this section and class B electricians, not to exceed the amount of five~~twenty-five~~ thousand dollars for a master electrician and four thousand dollars for a class B electrician. The board shall waive the deposit for a renewal of license by electricians who have made an initial deposit under this section if at the beginning of the renewal year the fund exceeds fifty thousand dollars. Funds in excess of fifty thousand dollars at the end of each year may be committed and used at the direction of Effective July 1, 2016, the board shall use any money remaining in the special fund to inform and educate electricians concerning the requirements of the electrical code. The board may prescribe forms for the undertaking and make rules it deems necessary to carry out the intent of this section.~~

<sup>166</sup> **SECTION 3. REPEAL.** Section 43-09-14 of the North Dakota Century Code is repealed.

**SECTION 4. EFFECTIVE DATE.** Section 3 of this Act becomes effective on August 1, 2017.

Approved April 22, 2015

Filed April 22, 2015

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<sup>166</sup> Section 43-09-14 was amended by section 2 of House Bill No. 1229, chapter 292.

## CHAPTER 293

### SENATE BILL NO. 2097

(Industry, Business and Labor Committee)  
(At the request of the State Board of Cosmetology)

AN ACT to amend and reenact sections 43-11-01, 43-11-02, 43-11-04, 43-11-11, 43-11-13, 43-11-15, 43-11-25, 43-11-26, subsection 1 of section 43-11-27, and section 43-11-28 of the North Dakota Century Code, relating to the practice and licensing of cosmetology, manicuring, and esthetics.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-11-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-11-01. Definitions.**

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

1. "Board" means the state board of cosmetology.
2. "Booth space" means that part of a licensed salon that is operated independently by an individual licensed under this chapter.
3. "Cosmetologist" means an individual licensed under this chapter to practice cosmetology.
- ~~3-4.~~ "Cosmetology" means any one or a combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology includes the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, ~~waxing to remove~~ performing noninvasive hair removal, beautifying, or similar work on the body, manipulation of eyelashes, or manicuring the nails of any person.
- 4-5. "Cosmetology salon" includes that part of any building in which the occupation of a cosmetologist is practiced.
- 5-6. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. ~~An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.~~
- 6-7. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.

- 7-8. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- 8-9. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
- a. ~~Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and~~
  - b. Chemical peels, ~~except for chemical peels using:~~
    - (1) ~~Thirty percent or higher concentration of alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;~~
    - (2) ~~Twenty percent or higher concentration of beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or~~
    - (3) ~~Two percent or higher concentration of resorcinol with a pH of 3.0 or higher;~~
    - (4) ~~Fifteen percent or higher concentration of trichloroacetic acid (TCA); or~~
    - (5) ~~Fifteen percent or higher concentration of phenol.~~
- ~~9.~~ "Manager-operator" ~~means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.~~
10. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
11. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
12. "Master cosmetologist" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~12-13.~~ "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
- ~~13-14.~~ "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, ~~waxing to remove~~ performing noninvasive hair removal, beautifying, or similar work on the body of any person. The term does not include invasive care.
- 14-15. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.

~~45-16.~~ "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

~~46-17.~~ "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

**SECTION 2. AMENDMENT.** Section 43-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-02. Exemptions from provisions of chapter.**

This chapter does not apply to:

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by a person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a cosmetologist or manicurist.
4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation.
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.
6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. The board may adopt rules to ensure sanitary conditions for services provided under this exemption.
7. Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.
8. Skin care provided under the supervision, control, and responsibility of a physician in the hospital, clinic, or physician's office ~~physician practicing within the scope of the physician's license under chapter 43-17 or nurse practicing within the scope of the nurse's license under chapter 43-12.1.~~

**SECTION 3. AMENDMENT.** Section 43-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-04. Members of board - Qualifications.**

Each member of the board must be a citizen of this state. Three of the members of the board must each be a licensed cosmetologist who has had at least three years' practical experience in the occupation. ~~The other two members~~ One member of the

board must be ~~citizen members, at least one of whom has~~ professional experience as a secondary teacher or as a postsecondary educator. One member of the board must be a licensed health care provider.

**SECTION 4. AMENDMENT.** Section 43-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-11. Sanitary rules - Practice outside salon.**

The board with the approval of the state department of health shall adopt sanitary rules necessary to prevent the creating and spreading of infectious and contagious diseases. A cosmetology salon must be at a fixed location and may not be used for living or sleeping quarters. ~~An operator~~A cosmetologist or esthetician may practice outside of the establishment under the direction and control of ~~an owner or manager~~a master cosmetologist or master esthetician thereof under rules adopted by the board.

**SECTION 5. AMENDMENT.** Section 43-11-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-13. License required.**

No person in this state may engage in or attempt to engage in the occupation of cosmetology, manicuring, or skin care, nor conduct a cosmetology salon or booth or school of cosmetology, unless having first obtained a license.

**SECTION 6. AMENDMENT.** Section 43-11-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-15. ~~Cosmetology salon~~Salon ownership and operation.**

~~A cosmetology salon~~ may be owned by any person authorized to do business in this state. A cosmetology salon must be operated and supervised by a ~~manager-operator~~master cosmetologist. A manicuring salon must be operated and supervised by a master cosmetologist or master manicurist. A salon providing only skin care must be operated and supervised by a master cosmetologist or master esthetician.

**SECTION 7. AMENDMENT.** Section 43-11-25 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-25. License issued without examination - Conditions.**

The board may dispense with the examination of applicants for licenses to practice cosmetology and may grant licenses upon the payment of a fee for original licensure and the reciprocity fee if all the following requirements are met:

1. The applicant has ~~complied~~;
  - a. Complied with the requirements for registration of the District of Columbia, or another state, territory, foreign country, or province where the requirements are equal substantially to those in force in this state at the time the application for the license is filed; or
  - b. Provided satisfactory proof of completing the course curriculum hours required by the board and provided proof of successfully passing the theoretical and practical examinations substantially similar to those required in this state.

2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

**SECTION 8. AMENDMENT.** Section 43-11-26 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-26. ~~Manager-operator~~Master cosmetologist - License - Qualifications.**

An individual may obtain a ~~manager-operator's~~master cosmetologist's license upon meeting all the following requirements:

1. Furnishing to the board evidence of having practiced as a cosmetologist for at least one thousand hours.
2. Paying an original licensure fee as set forth in section 43-11-28.
3. Complying with the other requirements of this chapter applicable to a ~~manager-operator~~master cosmetologist.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

1. No person may be licensed as an instructor of cosmetology unless the person furnishes the board the examination fee set forth in section 43-11-28 and evidence of having a general education equivalent to the completion of four years in high school. An applicant:
  - a. Shall have at least nine hundred sixty hours instructor's training in cosmetology in a school of cosmetology. ~~In no event may more than two thousand sixty hours instructor's training be required for admission to examination.~~ Under this subdivision the practical portion of the examination may be waived if the written examination is supplemented with videotapes of the applicant's teaching procedures;
  - b. Shall possess a current North Dakota license as a cosmetologist and must have been actively engaged in the practice of cosmetology for at least one year before application for an instructor's license, supplemented by not less than four hundred eighty hours instructor's training in a school of cosmetology or course of training approved by the board; or
  - c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in a school of cosmetology or course of training approved by the board. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.

**SECTION 10. AMENDMENT.** Section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

**43-11-28. Fees.**

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter may not exceed the following amounts:
  - a. Original registrations, licenses, and annual renewals:
 

	MAXIMUM FEE:
(1) Salons, original registration	\$80.00
(2) Salons, annual renewal	\$30.00
(3) School of cosmetology, original registration	\$505.00
(4) School of cosmetology, annual renewal	\$205.00
(5) <del>Operator</del> Cosmetologist, original license	\$15.00
(6) <del>Operator</del> Cosmetologist, annual renewal	\$15.00
(7) <del>Manager-operator</del> Master cosmetologist, original license	\$25.00
(8) <del>Manager-operator</del> Master cosmetologist, annual renewal	\$20.00
(9) Instructor, original license	\$35.00
(10) Instructor, annual renewal	\$20.00
(11) <del>Demonstrators</del> , original license	\$30.00
(12) Demonstrators, annual renewal	\$20.00
<del>(13)</del> Reciprocity license fee	\$105.00
<del>(14)</del> (12) Registration fee for student instructor	\$15.00
<del>(15)</del> (13) Duplicate license	\$10.00
(16) Penalty fee for late renewal	\$15.00
<del>(17)</del> (14) Certification fee	\$20.00
  - b. Examinations:
    - (1) ~~Operator~~Cosmetology practical examination \$25.00
    - (2) Instructors practical examination \$55.00
    - (3) Written examination fees are set and collected by the administrator of the examination and payment is the responsibility of the applicant.
2. Fees are not prorated or returnable. The board may charge a ~~ten~~fifty dollar penalty for each license renewal ~~applications~~application received after December thirty-first. ~~The board may reduce a renewal fee from the maximum amount only if the board applies an equal percentage of reduction to all~~

~~renewal fees.~~ The board shall sponsor an educational program for licenseholders to carry out the purposes of protecting the public health and safety and maintaining capable and skilled operators, ~~manager-operators, cosmetologists, manicurists, estheticians,~~ and instructors. The board shall use such portion of the renewal fees as the board may determine for the purpose of providing the educational program.

Approved April 20, 2015  
Filed April 20, 2015

## CHAPTER 294

### HOUSE BILL NO. 1396

(Representatives Sukut, Damschen, Fehr, Hatlestad, Lefor, Rohr)  
(Senator Bekkedahl)

AN ACT to provide student loan repayment programs for health care professionals; to repeal chapters 43-12.2 and 43-17.2 of the North Dakota Century Code, relating to student loan repayment programs for health care professionals; to provide for a continuing appropriation; and to provide for an application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

##### SECTION 1.

##### **Student loan repayment programs - Health care professionals.**

The health council shall administer student loan repayment programs, as established by this chapter, for health care professionals willing to provide services in areas of this state that have a defined need for such services.

##### SECTION 2.

##### **Application process.**

The health council shall develop an application process for public and private entities seeking to fill health care needs and for health care professionals willing to provide necessary services in exchange for benefits under a student loan repayment program.

##### SECTION 3.

##### **Public and private entities - Selection criteria - Matching funds.**

1. The health council shall establish criteria to be used in selecting public and private entities for participation in a program. The criteria must include:
  - a. The number of health care professionals, by specified field, already providing services in the area;
  - b. Access to health care services in the area; and
  - c. The level of support from the area.
2. The health council may consult with health care and social service providers, advocacy groups, governmental entities, and others in establishing criteria and evaluating needs based on the criteria.
3. An entity may not be selected for participation unless it contractually commits to provide matching funds equal to the amount required for a loan repayment program in accordance with section 6 of this Act.

**SECTION 4.****Public and private entities - Eligibility for participation - Priority.**

In selecting public and private entities for participation in a program the health council shall give priority to an entity that:

1. Meets the selection criteria;
2. Is located in an area that is statistically underserved; and
3. Is located at least twenty miles [32.18 kilometers] outside the boundary of a city having more than forty thousand residents.

**SECTION 5.****Health care professionals - Selection criteria.**

1. The health council shall establish criteria to be used in selecting health care professionals for participation in a student loan repayment program. The criteria must include:
  - a. The health care professional's specialty;
  - b. The need for the health care professional's specialty within an area;
  - c. The health care professional's education and experience;
  - d. The health care professional's date of availability and anticipated term of availability; and
  - e. The health care professional's willingness to accept medicare and medicaid assignments, if applicable.
2. In selecting health care professionals for participation in the program the health council shall require that the individual:
  - a. Is physically present at and provides services on a full-time basis to an entity that meets the requirements of section 4; or
  - b. (1) Is physically present at and provides services on at least a half-time basis to an entity that meets the requirements of section 4;
    - (2) Provides telehealth services to a second entity that meets the requirements of section 4; and
    - (3) Verifies that the services provided under paragraphs 1 and 2 are equal to the full-time requirement of subdivision a.
3. In selecting health care professionals for participation in a program, the health council may consider an individual's:
  - a. Length of residency in this state; and
  - b. Attendance at an in-state or an out-of-state institution of higher education.

**SECTION 6.****Student loan repayment program - Contract.**

1. The health council shall enter into a contract with a selected health care professional. The health council shall agree to provide student loan repayments on behalf of the selected health care professional subject to the requirements and limitations of this section.
  - a. For a physician:
    - (1) The loan repayment must be equal to twenty thousand dollars per year; and
    - (2) The matching funds must equal fifty percent of the amount required in paragraph 1.
  - b. For a clinical psychologist:
    - (1) The loan repayment must be equal to twelve thousand dollars per year; and
    - (2) The matching funds must equal twenty-five percent of the amount required in paragraph 1.
  - c. For an advanced practice registered nurse or a physician assistant:
    - (1) The loan repayment must be equal to four thousand dollars per year; and
    - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
  - d. (1) For a behavioral health professional:
    - (a) The loan repayment must be equal to four thousand dollars per year; and
    - (b) The matching funds must equal ten percent of the amount required in subparagraph a.
  - (2) For purposes of this subdivision, a behavioral health professional means an individual who practices in the behavioral health field and is:
    - (a) A licensed addiction counselor;
    - (b) A licensed professional counselor;
    - (c) A licensed social worker;
    - (d) A registered nurse; or
    - (e) A specialty practice registered nurse.

2.
  - a. Payments under this section must be made on behalf of the health care professional directly to the Bank of North Dakota or to another participating lending institution.
  - b. Except as otherwise provided, payments under this section may be made only at the conclusion of each twelve month period of service.
  - c. Prorated payments may be made only if:
    - (1) The repayment of the loan requires less than a full annual payment;
    - (2) The health care professional is terminated or resigns from his or her position; or
    - (3) The health care professional is unable to complete a twelve month period of service due to the individual's death, a certifiable medical condition or disability, or a call to military service.
3. Payments under this section terminate upon the earlier of:
  - a. The full repayment of the health care professional's student loan; or
  - b. The completion of five years as a participant in the student loan repayment program.
4. The health council shall waive the requirements of this section that pertain to matching funds if the health care professional opens a new practice as a solo practitioner in a city that has fewer than fifteen thousand residents.

## **SECTION 7.**

### **Powers of the health council - Continuing appropriation.**

1. The health council may:
  - a. Receive and expend any gifts, grants, and other funds for the purposes of this program;
  - b. Participate in any federal programs providing for the repayment of student loans on behalf of health care professionals; and
  - c. Do all things necessary and proper for the administration of this chapter.
2. All moneys received by the health council under this section are appropriated to the health council on a continuing basis, to be used exclusively for the purposes of this chapter.

**SECTION 8. REPEAL.** Chapters 43-12.2 and 43-17.2 of the North Dakota Century Code are repealed.

**SECTION 9. APPLICATION.** This Act applies to loan repayment contracts entered into on or after August 1, 2015. Any loan repayment contract entered into before August 1, 2015, in accordance with chapter 43-12.2, is governed by chapter 43-12.2, as it existed on July 31, 2015. Any loan repayment contract entered into before August 1, 2015, in accordance with chapter 43-17.2, is governed by chapter 43-17.2, as it existed on July 31, 2015.

Approved April 27, 2015  
Filed April 27, 2015

## CHAPTER 295

### SENATE BILL NO. 2173

(Senators Klein, J. Lee, Murphy)  
(Representatives Keiser, Oversen, Weisz)

AN ACT to amend and reenact section 43-15-31.4 of the North Dakota Century Code, relating to the governance of prescriptive practices for pharmacists.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>167</sup> **SECTION 1. AMENDMENT.** Section 43-15-31.4 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-15-31.4. Limited prescriptive practices.**

1. ~~A licensed pharmacist in an institutional setting has limited prescriptive practices to initiate or modify drug therapy following diagnosis and initial patient assessment by a licensed physician or an advanced practice registered nurse, under the supervision of the same licensed physician or advanced practice registered nurse, in accordance with this section. An institutional setting, for the purpose of this section, is a hospital, a physician clinic, a skilled nursing facility, or a swing-bed facility in which a patient's medical records are readily available to the licensed physician and the licensed pharmacist. The licensed physician or the advanced practice registered nurse and the pharmacist must have access to the patient's appropriate medical records. The care provided to the patient by the pharmacist must be recorded in the patient's medical records and communicated to the licensed physician or the advanced practice registered nurse.~~
2. ~~The licensed physician or the advanced practice registered nurse and the licensed pharmacist shall prepare a collaborative agreement concerning the scope of the pharmacist's prescriptive practices and shall update the agreement at least every two four years or when they modify the scope of the pharmacist's prescriptive practices. The collaborative agreement, or an amendment to the agreement, is effective when approved by the board of medical examiners or board of nursing and the board of pharmacy.~~
3. ~~The collaborative agreement may be between a medical director and pharmacist-in-charge. The medical director and pharmacist-in-charge shall report to the respective board of any physician, advanced practice registered nurse, and pharmacist covered under the agreement.~~
- 3.4. ~~If there is a change in personnel under the collaborative agreement, a pharmacist, physician, and advanced practice registered nurse under the collaborative agreement shall send immediate notice of the change to the respective licensing board of that individual. Unless necessary, a change in~~

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<sup>167</sup> Section 43-15-31.4 was also amended by section 16 of House Bill No. 1153, chapter 297.

personnel does not necessitate board approval of the collaborative agreement.

5. The collaborative agreement must include a provision that requires the licensed pharmacist to immediately notify the licensed physician or advanced practice registered nurse when the licensed pharmacist initiates or modifies a drug therapy.
- 4.6. ~~The board of medical examiners and the board of pharmacy shall jointly establish a prescriptive practices committee consisting of two physicians appointed by the board of medical examiners, one physician appointed by the North Dakota medical association, one pharmacist appointed by the board of pharmacy, and one pharmacist appointed by the North Dakota pharmaceutical association. The prescriptive practices committee shall develop and submit proposed rules concerning the implementation of this section to the board of medical examiners and the board of pharmacy. Any rules to implement this section must be jointly adopted by the board of medical examiners or the board of nursing and the board of pharmacy.~~

Approved March 18, 2015

Filed March 18, 2015

## CHAPTER 296

### SENATE BILL NO. 2086

(Industry, Business and Labor Committee)  
(At the request of the State Board of Pharmacy)

AN ACT to create and enact sections 43-15.3-13 and 43-15.3-14 of the North Dakota Century Code, relating to drugs provided by outsourcing facilities and third-party logistics providers; and to amend and reenact sections 43-15.3-01, 43-15.3-11, and 43-15.3-12 of the North Dakota Century Code, relating to the wholesale drug distribution and third-party logistic providers.

#### 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 or a third-party logistics provider 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 third-party logistics provider and the manufacturer or between the wholesale distributor and a manufacturer when the third-party logistics provider or 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 or a third-party logistics provider has a written agreement currently in effect with the manufacturer evidencing the ongoing relationship; and
  - b. The wholesale distributor or a third-party logistics provider 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.

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.
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.
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.
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.

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.
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.
17. "Outsourcing facility" means a facility at one geographic location or address which is engaged in anticipatory compounding of sterile drugs and complies with section 503(b) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)].
18. "Pedigree" means a document or an electronic file containing information that records each distribution of any given prescription drug.
- ~~18-19.~~ "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.

- 19-20. "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)].
- 20-21. "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug. The term does not include actions completed by the pharmacists responsible for dispensing product to the patient.
- 21-22. "Repackager" means a person that repackages.
- 22-23. "Third-party logistics provider" means a person that contracts with a wholesale distributor or a prescription drug, medical gas, or medical equipment manufacturer to provide or coordinate warehousing, wholesale 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~~ independently under this chapter and to be considered part of the normal distribution channel must also be an authorized distributor of record.
- 23-24. "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.
- 24-25. "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.
- 25-26. "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.
- 26-27. "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.

27-28. "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.
- 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.
- h. The sale of minimal quantities of prescription drugs, medical gases, or medical equipment by retail pharmacies to licensed practitioners for office use.
- 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.
- 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.
- 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.

- 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.
- 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.

28-29. "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; manufacturers' 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 43-15.3-11 of the North Dakota Century Code is amended and reenacted 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 and items designated as thirteen month capped rental items by the center of medicare and medicaid services 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 3. AMENDMENT.** Section 43-15.3-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-15.3-12. Fees.**

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

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

**SECTION 4.** Section 43-15.3-13 of the North Dakota Century Code is created and enacted as follows:

**43-15.3-13. Compounding provided by an outsourcing facility.**

1. A facility may provide, without a patient specific prescription, a nonpatient specific compounded drug preparation for human use only, if the following conditions apply:
  - a. The entity is registered with the United States food and drug administration as an outsourcing facility pursuant to section 503(b) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)]; and
  - b. The entity is licensed under this chapter with an outsourcing facility classification, has designated a licensed pharmacist in the state of residence as the responsible person on the license, and the facility meets the standards for licensure set in this chapter.
2. Within forty-eight hours of a request from the board, the facility shall make available to the board any inspection reports, federal food and drug administration reports of objectionable conditions issued against the facility, and lists of distribution of products to the state.
3. The facility shall comply with all labeling and recordkeeping requirements pursuant to section 503(b) of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)].

**SECTION 5.** Section 43-15.3-14 of the North Dakota Century Code is created and enacted as follows:

**43-15.3-14. Third-party logistics providers.**

1. Each third-party logistics provider shall comply with the standards for licensure; requirements to distribute prescription drugs, medical gases, or

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medical equipment; restrictions on transactions; and pedigree requirements set forward in this chapter.

2. The board shall issue a separate license to each qualified third-party logistics provider applying for licensure.

Approved April 6, 2015  
Filed April 6, 2015

## CHAPTER 297

### HOUSE BILL NO. 1153

(Representatives Keiser, Rick C. Becker)  
(Senator Kilzer)

AN ACT to amend and reenact subdivision d of subsection 2 of section 12-60-24, subsection 1 of section 19-03.1-01.1, subsection 1 of section 19-03.3-01, subdivision f of subsection 2 of section 19-03.5-07, sections 23-23.1-01, 23-23.1-02, 23-34-03, 23-34-04, and 25-02-04, subsection 1 of section 26.1-14-04, subsection 1 of section 26.1-14-05, subsection 8 of section 26.1-26.4-04, subsection 1 of section 43-05-02, subsection 1 of section 43-13-13.3, sections 43-15-25.3 and 43-15-31.4, subsection 1 of section 43-17-01, sections 43-17-02, 43-17-02.2, 43-17-02.3, 43-17-03, 43-17-05, 43-17-07.1, and 43-17-26.1, subsection 7 of section 43-17-30.1, section 43-17.1-01, subsection 2 of section 43-17.1-05, section 43-17.1-05.1, subsection 7 of section 43-17.1-06, section 43-17.1-08, subsection 3 of section 43-17.2-01, subsection 3 of section 43-17.2-03, subsection 1 of section 43-17.3-01, subsection 7 of section 43-28-06, subsection 2 of section 43-39-10, subdivision g of subsection 1 of section 43-46-01, paragraph 6 of subdivision a of subsection 1 of section 43-51-01, subsection 2 of section 43-51-11, subsection 3 of section 43-60-01, and section 65-02-21.1 of the North Dakota Century Code, relating to changing the name of the board of medical examiners to the board of medicine.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>168</sup> **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- d. The ~~medical examiners~~North Dakota board of medicine for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. In carrying out its duties under this chapter, the board shall consult with representatives of each of the following interests: North Dakota board of medical examiners~~medicine~~, board of dental examiners, board of registry in podiatry, board of veterinary medical examiners, board of nursing, the college of pharmacy, and the school of medicine.

**SECTION 3. AMENDMENT.** Subsection 1 of section 19-03.3-01 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>168</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1105, chapter 97, and section 1 of House Bill No. 1125, chapter 98, and section 1 of Senate Bill No. 2077, chapter 99, and section 1 of Senate Bill No. 2085, chapter 302, section 1 of Senate Bill No. 2236, chapter 309, section 3 of House Bill No. 1436, chapter 67, section 1 of Senate Bill No. 2145, chapter 100, and section 6 of Senate Bill No. 2215, chapter 96.

1. "Board" means the ~~state board of medical examiners~~North Dakota board of medicine.

**SECTION 4. AMENDMENT.** Subdivision f of subsection 2 of section 19-03.5-07 of the North Dakota Century Code is amended and reenacted as follows:

- f. One prescriber selected by the North Dakota board of medical examiners~~medicine~~;

**SECTION 5. AMENDMENT.** Section 23-23.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-23.1-01. Use of laetrile authorized.**

No hospital or health facility may interfere with the physician-patient relationship by restricting or forbidding the use of amygdalin when prescribed or administered by a licensed physician and requested by a patient unless the substance as prescribed or administered by the physician is found to be harmful by the ~~state board of medical examiners~~North Dakota board of medicine in a hearing conducted pursuant to chapter 28-32.

**SECTION 6. AMENDMENT.** Section 23-23.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-23.1-02. Disciplinary action for administering or prescribing laetrile subject to finding of harmfulness.**

No physician may be subject to disciplinary action by the ~~state board of medical examiners~~North Dakota board of medicine for prescribing or administering amygdalin to a patient under the physician's care who has requested the substance unless the board, in a hearing conducted pursuant to chapter 28-32, has made a formal finding that the substance is harmful.

**SECTION 7. AMENDMENT.** Section 23-34-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-03. Peer review records - Privileged - Exceptions.**

1. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:
  - a. Records gathered from an original source that is not a peer review organization;
  - b. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
  - c. Peer review records subpoenaed in an investigation conducted by an investigative panel of the North Dakota board of medical examiners~~medicine~~ pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the North Dakota board of medical examiners~~medicine~~ pursuant to section 43-17-30.1.
2. Any peer review records provided to an investigative panel of the North Dakota board of medical examiners~~medicine~~ or introduced as evidence in any

disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

**SECTION 8. AMENDMENT.** Section 23-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-34-04. Peer review organization - Mandatory reports - Penalty.**

1. A peer review organization shall report to an investigative panel of the North Dakota board of ~~medical examiners~~medicine any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31.
2. A health care organization is guilty of a class B misdemeanor if its peer review organization fails to make any report required by this section.

**SECTION 9. AMENDMENT.** Section 25-02-04 of the North Dakota Century Code is amended and reenacted as follows:

**25-02-04. Superintendent to possess certain qualifications - Medical director - Employees.**

The superintendent of the state hospital must be a skilled health care administrator with professional training and experience relating to the management of facilities for mentally ill and chemically dependent persons and relating to the needs of the mentally ill and chemically dependent persons. The medical director, who must be a licensed physician and board-certified psychiatrist, shall recommend appointment of all physicians and clinical staff, define their qualifications and duties, and have final authority for the organization and delivery of all medical and clinical services delivered to patients at the state hospital. The state hospital governing body has final approval of all physician and clinical staff appointments to the state hospital. The superintendent shall appoint the medical director in consultation with the supervising officer and with the approval of the governing body. If the superintendent is not a licensed physician and board-certified psychiatrist, the medical director, or a qualified designee of the medical director, shall act as the superintendent's designee in all matters in which the superintendent's opinion on medical or clinical treatment is required by law. Every physician on the professional staff must have a license issued by the ~~state board of medical examiners~~North Dakota board of medicine.

**SECTION 10. AMENDMENT.** Subsection 1 of section 26.1-14-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The company will be governed by a board of directors consisting of eleven members. The commissioner shall appoint the initial board within thirty days of notification by the ~~state board of medical examiners~~North Dakota board of medicine of its decision for implementation of this chapter from fifteen nominees proposed by that board. The initial board shall serve for an initial term of seven months. Thereafter, the directors must be elected by the members of the company in accordance with the articles of incorporation and bylaws.

**SECTION 11. AMENDMENT.** Subsection 1 of section 26.1-14-05 of the North Dakota Century Code is amended and reenacted as follows:

1. If physicians practicing medicine within North Dakota find it difficult to obtain medical malpractice insurance, the ~~state board of medical examiners~~North Dakota board of medicine, by a majority vote of its membership, may elect to initiate and implement this chapter. Before fifteen days from the date the election to implement this chapter is made, the board shall certify to the state treasurer a list of all licensed physicians as shown in the latest record of the board.

**SECTION 12. AMENDMENT.** Subsection 8 of section 26.1-26.4-04 of the North Dakota Century Code is amended and reenacted as follows:

8. Psychologists making utilization review determinations shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations shall have current licenses from the ~~state board of medical examiners~~North Dakota board of medicine.

**SECTION 13. AMENDMENT.** Subsection 1 of section 43-05-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Physicians and surgeons licensed by the ~~state board of medical examiners~~North Dakota board of medicine.

**SECTION 14. AMENDMENT.** Subsection 1 of section 43-13-13.3 of the North Dakota Century Code is amended and reenacted as follows:

1. An optometrist certified by the board in the use of pharmaceutical agents as provided in this chapter must be held to the same standard of care in the use of such agents as are physicians licensed by the ~~state board of medical examiners~~North Dakota board of medicine.

**SECTION 15. AMENDMENT.** Section 43-15-25.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-25.3. Approved laboratory tests.**

Approved laboratory tests are the following waived screening tests: glucose monitoring devices (FDA cleared/home use) 9221, cholesterol 1020, HDL cholesterol 2550, triglyceride 6118, and glycosylated hemoglobin (Hgb A1C) 2204. Additional tests may be added to this list as jointly determined by the board and the North Dakota board of medical examiners~~medicine~~.

<sup>169</sup> **SECTION 16. AMENDMENT.** Section 43-15-31.4 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-31.4. Limited prescriptive practices.**

1. A licensed pharmacist in an institutional setting has limited prescriptive practices to initiate or modify drug therapy following diagnosis and initial patient assessment by a licensed physician, under the supervision of the same licensed physician, in accordance with this section. An institutional setting, for the purpose of this section, is a hospital, a physician clinic, a skilled nursing facility, or a swing-bed facility in which a patient's medical records are readily available to the licensed physician and the licensed pharmacist.

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<sup>169</sup> Section 43-15-31.4 was also amended by section 1 of Senate Bill No. 2173, chapter 295.

2. The licensed physician and the licensed pharmacist shall prepare a collaborative agreement concerning the scope of the pharmacist's prescriptive practices and shall update the agreement at least every two years or when they modify the scope of the pharmacist's prescriptive practices. The collaborative agreement, or an amendment to the agreement, is effective when approved by the North Dakota board of ~~medical examiners~~medicine and the board of pharmacy.
3. The agreement must include a provision that requires the licensed pharmacist to immediately notify the licensed physician when the licensed pharmacist initiates or modifies a drug therapy.
4. The North Dakota board of ~~medical examiners~~medicine and the board of pharmacy shall jointly establish a prescriptive practices committee consisting of two physicians appointed by the North Dakota board of ~~medical examiners~~medicine, one physician appointed by the North Dakota medical association, one pharmacist appointed by the board of pharmacy, and one pharmacist appointed by the North Dakota pharmaceutical association. The prescriptive practices committee shall develop and submit proposed rules concerning the implementation of this section to the North Dakota board of ~~medical examiners~~medicine and the board of pharmacy. Any rules to implement this section must be jointly adopted by the board of ~~medical examiners~~medicine and the board of pharmacy.

**SECTION 17. AMENDMENT.** Subsection 1 of section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means the ~~state board of medical examiners~~North Dakota board of medicine.

<sup>170</sup> **SECTION 18. AMENDMENT.** Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02. Persons exempt from the provisions of chapter.**

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

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the ~~state board of medical examiners~~North Dakota board of medicine may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.
2. The domestic administration of family remedies.
3. Dentists practicing their profession when properly licensed.
4. Optometrists practicing their profession when properly licensed.
5. The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person

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<sup>170</sup> Section 43-17-02 was also amended by section 1 of Senate Bill No. 2191, chapter 308, and section 2 of Senate Bill No. 2236, chapter 309.

administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if the person does not hold out to be a physician or surgeon.

6. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
7. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
8. Podiatrists practicing their profession when properly licensed.
9. Any person rendering services as a physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician. However, sections 43-17-02.1 and 43-17-02.2 do apply to physician assistants. ~~The state board of medical examiners~~North Dakota board of medicine shall prescribe rules governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of physician assistants. Physician assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.
10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
11. A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that ~~the state board of medical examiners~~North Dakota board of medicine prescribes rules governing the conduct, permits, fees, qualifications, activities, discipline, and supervision of radiologic technologists who provide those services.
12. A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.

**SECTION 19. AMENDMENT.** Section 43-17-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.2. Use of certain words or initials prohibited.**

The terms "physician assistant" and "certified physician assistant" and the initials "PA-C" may only be used to identify a person who has been issued a certificate of qualification by the ~~North Dakota board of medical examiners~~medicine. A person who uses those terms or initials as identification without having received a certificate of qualification is engaging in the practice of medicine without a license.

**SECTION 20. AMENDMENT.** Section 43-17-02.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted license.**

Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the ~~state board of medical examiners~~North Dakota board of medicine under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation or teaching assistance for a period of not more than twenty-four hours; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations.

**SECTION 21. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-03. ~~State board of medical examiners~~North Dakota board of medicine - How appointed - Qualifications.**

1. The governor shall appoint a ~~state board of medical examiners~~North Dakota board of medicine consisting of thirteen members, nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, one of whom is a physician assistant, and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
  - a. Be a practicing physician of integrity and ability.
  - b. Be a resident of and duly licensed to practice medicine in this state.
  - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
  - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
  - a. Be a resident of this state.
  - b. Be at least twenty-one years of age.
  - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. The physician assistant member of the board must:

- a. Be a practicing physician assistant of integrity and ability.
  - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
  - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

**SECTION 22. AMENDMENT.** Section 43-17-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-05. Removal of members of state board of medical examiners**~~North Dakota board of medicine~~ - Reelection.

The governor for good cause shown and upon the recommendation of three-fourths of the members of the North Dakota board of medicine may remove any member of such board for misconduct, incapacity, or neglect of duty.

**SECTION 23. AMENDMENT.** Section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-07.1. Powers of the board of medical examiners**~~medicine~~.

In addition to any other powers, the board may:

1. Employ or contract with one or more organizations or agencies known to provide acceptable examinations for the preparation and scoring of required examinations relating to physician licensure, and employ or contract with one or more organizations or agencies known to provide acceptable examination services for the administration of the required examination.
2. Prescribe the time, place, method, manner, scope, and subject of examination.
3. Impose sanctions, deny licensure, levy fines, or seek appropriate civil or criminal penalties against anyone who violates or attempts to violate examination security, anyone who obtains or attempts to obtain licensure by fraud or deception, and anyone who knowingly assists in that type of activity.
4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation 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 the criminal history record check are the responsibility of the licensee or applicant.

5. Require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.
6. Establish a mechanism for dealing with a licensee who abuses or is dependent upon or addicted to alcohol or other addictive chemical substances, to enter an agreement, at its discretion, with a professional organization whose relevant procedures and techniques it has evaluated and approved for the organization's cooperation or participation.
7. Issue a cease and desist order, obtain a court order, or an injunction to halt unlicensed practice, a violation of this chapter, or a violation of the rules of the board.
8. Issue a conditional, restricted, or otherwise circumscribed license as it determines necessary.

**SECTION 24. AMENDMENT.** Section 43-17-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17-26.1. License renewals - Late fees.**

A physician seeking to renew the annual registration who has failed to complete the annual registration process within the time specified by the ~~state board of medical examiners~~North Dakota board of medicine must be assessed a fee equal to three times the normal annual registration fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

**SECTION 25. AMENDMENT.** Subsection 7 of section 43-17-30.1 of the North Dakota Century Code is amended and reenacted as follows:

7. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the ~~state board of medical examiners~~North Dakota board of medicine must be deposited in the state general fund.

**SECTION 26. AMENDMENT.** Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-01. Definitions.**

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

1. "Board" means the ~~state board of medical examiners~~North Dakota board of medicine.
2. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

**SECTION 27. AMENDMENT.** Subsection 2 of section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. If the investigative panel determines that a formal hearing should be held to determine whether any licensed physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by law, it shall inform the respondent physician, physician assistant, or fluoroscopy technologist involved of the specific charges to be considered by serving upon that person a copy of a formal complaint filed with the board of ~~medical examiners~~ for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the investigative panel may not participate in any proceeding before the board relating to said complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.

**SECTION 28. AMENDMENT.** Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-05.1. Reporting requirements.**

A physician, a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the investigative panel of the board. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or fluoroscopy technologist who violates this section is subject to administrative action by the ~~North Dakota state board of medical examiners~~ as specified by law or by administrative rule.

**SECTION 29. AMENDMENT.** Subsection 7 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

7. File a formal complaint against any licensed physician, physician assistant, or fluoroscopy technologist with the ~~state board of medical examiners~~.

**SECTION 30. AMENDMENT.** Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-17.1-08. Communication to investigative panel privileged.**

Communications to the investigative panels and their agents are privileged, and no member of the investigative panels nor any of their agents may be compelled to testify with respect thereto in any proceedings except in formal proceedings conducted before the ~~board of medical examiners~~. All records of the investigative panels, except their financial records, are confidential. Notwithstanding the provisions of this section, if an investigative panel determines that the records of the investigative panel disclose a possible violation of state or federal criminal law, the investigative panel may provide the records to the appropriate law enforcement agency.

**SECTION 31. AMENDMENT.** Subsection 3 of section 43-17.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. Under the program, loan repayments may be made to a recipient for educational expenses incurred while the recipient was attending an accredited four-year allopathic or osteopathic medical school located in the United States, its possessions, territories, or Canada and approved by the ~~state board of medical examiners~~North Dakota board of medicine or by an accrediting body approved by the board.

**SECTION 32. AMENDMENT.** Subsection 3 of section 43-17.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A physician who receives loan repayment under this chapter:
  - a. Must be a graduate of an accredited four-year allopathic or osteopathic medical school located in the United States, its possessions, territories, or Canada and approved by the ~~state board of medical examiners~~North Dakota board of medicine or by an accrediting body approved by the board;
  - b. Must have a full and unrestricted license to practice medicine in this state;
  - c. Shall submit an application to participate in the loan repayment program; and
  - d. Must have entered into an agreement with a selected community to provide full-time medical services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

**SECTION 33. AMENDMENT.** Subsection 1 of section 43-17.3-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means the ~~state board of medical examiners~~North Dakota board of medicine.

**SECTION 34. AMENDMENT.** Subsection 7 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

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

<sup>171</sup> **SECTION 35. AMENDMENT.** Subsection 2 of section 43-39-10 of the North Dakota Century Code is amended and reenacted as follows:

2. 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~~medicine; 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 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 36. AMENDMENT.** Subdivision g of subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

- g. The ~~state board of medical examiners~~North Dakota board of medicine;

**SECTION 37. AMENDMENT.** Paragraph 6 of subdivision a of subsection 1 of section 43-51-01 of the North Dakota Century Code is amended and reenacted as follows:

- (6) ~~State board of medical examiners~~North Dakota board of medicine; and

**SECTION 38. AMENDMENT.** Subsection 2 of section 43-51-11 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section, the term board includes the state board of accountancy, state electrical board, North Dakota real estate appraiser qualifications and ethics board, state real estate commission, secretary of state with respect to contractor licensing, ~~state board of medical examiners~~North Dakota board of medicine, and state board of dental examiners.

**SECTION 39. AMENDMENT.** Subsection 3 of section 43-60-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Board" means the ~~state board of medical examiners~~North Dakota board of medicine.

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<sup>171</sup> Section 43-39-10 was also amended by section 3 of Senate Bill No. 2295, chapter 306.

**SECTION 40. AMENDMENT.** Section 65-02-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-21.1. Licensure required for psychologists and physicians performing utilization review.**

Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the ~~state board of medical examiners~~North Dakota board of medicine. This requirement does not apply to psychologists or physicians conducting independent medical examinations or independent medical reviews under section 65-05-28.

Approved March 26, 2015

Filed March 26, 2015

## CHAPTER 298

### SENATE BILL NO. 2335

(Senators Bekkedahl, Dever, Hogue)  
(Representatives Boschee, Fehr, K. Koppelman)

AN ACT to amend and reenact section 43-17-41 of the North Dakota Century Code, relating to the duty of a physician to report certain injuries.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>172</sup> **SECTION 1. AMENDMENT.** Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17-41. Duty of physicians and others to report injury - Penalty.**

1. Any physician, physician assistant, naturopath licensed under chapter 43-58, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:
  - a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or
  - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.
2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries, except when the individual's physical injury is the result of a sexual offense, as defined in chapter 12.1-20, in which case the individual's name, address, and any identifying information may not be included in the report without the individual's written release.
3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, naturopath, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.
4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written

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<sup>172</sup> Section 43-17-41 was also amended by section 2 of Senate Bill No. 2191, chapter 308.

reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.

5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

Approved March 27, 2015

Filed March 27, 2015

## CHAPTER 299

### SENATE BILL NO. 2185

(Senators Burckhard, Oehlke)  
(Representatives Bellew, Dockter, Frantsvog, Schatz)

AN ACT to amend and reenact sections 43-19.1-25 and 43-19.1-26 of the North Dakota Century Code, relating to disciplinary action procedure for professional engineers and land surveyors.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-19.1-25. Disciplinary action - Revocations, suspensions, or reprimand.**

The board may suspend, refuse to renew, or revoke the certificate of registration of and may reprimand any registrant. ~~In an order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a registrant, the board may direct a registrant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and the board's investigative panels in the investigation and prosecution of the case. Notwithstanding section 28-32-50, if a registrant is the prevailing party in an administrative appeal of a disciplinary action taken by the board under this section, the board shall pay the registrant's reasonable and actual costs, including reasonable attorney's fees.~~ These powers apply to any registrant who is found guilty of any of the following:

1. The practice of any fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of engineering or land surveying.
3. Any offense determined by the board to have a direct bearing upon an individual's ability to serve the public as a professional engineer and land surveyor; or when the board determines, following conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
4. The violation of the code of ethics adopted by the board.

**SECTION 2. AMENDMENT.** Section 43-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-19.1-26. Disciplinary action - Procedure.**

Any person may file charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant. Such charges must be in writing ~~and must be sworn to by each person making the charges~~ and must be filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within six months following the filing of charges unless the accused registrant waives this requirement. The

matters considered at the hearing must include all charges made in the original filing, together with any related or additional matters or charges that arise in connection with the investigation of the original charges, and which are set forth in a specification of issues for the hearing. The time and place for the hearing must be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, and a specification of the issues to be considered at the hearing must be served upon the accused registrant either personally or sent by registered mail to the last-known address of the registrant at least thirty days before the date fixed for hearing. At any hearing the accused registrant has the right to appear in person or by counsel, or both; to cross-examine witnesses appearing against the accused; and to produce evidence and witnesses in defense of the accused. If the accused fails or refuses to appear, the board may proceed to hear and determine the validity of the ~~charges~~issues set forth in the specification of issues. Following the hearing, the board members who did not serve on the investigative panel shall deliberate in executive session and if a majority of the board members who did not serve on the investigative panel vote in favor of sustaining ~~the charges~~all or part of the issues set forth in the specification of issues, the board shall make findings of fact and conclusions of law and shall issue the board's order and serve the findings, conclusions, and order upon the accused. In the order the board may reprimand, suspend, refuse to renew, or revoke the accused registrant's certificate of registration. Any registrant who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that registrant's certificate of registration may appeal the board's action to the district court under the procedures provided by chapter 28-32.

Approved March 20, 2015  
Filed March 20, 2015

## CHAPTER 300

### HOUSE BILL NO. 1074

(Industry, Business and Labor Committee)  
(At the request of the Real Estate Commission)

AN ACT to amend and reenact sections 43-23-13.1 and 43-23-17 of the North Dakota Century Code, relating to the application deadline for renewal of a real estate license and practicing as a real estate broker or salesperson without a license; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23-13.1. License renewal.**

Every person licensed to practice as a real estate broker or real estate salesperson must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than ~~December thirty-first of each year~~ the application deadline set by the commission. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee on or before the application deadline may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, a late fee as set by the commission for each month or fraction thereof after ~~January first~~ the application deadline. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

**SECTION 2. AMENDMENT.** Section 43-23-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-23-17. Penalty.**

Any person violating section 43-23-05 or is guilty of a class B misdemeanor. Any person violating section 43-23-14.1 is guilty of an infraction.

Approved March 12, 2015  
Filed March 12, 2015

## CHAPTER 301

### HOUSE BILL NO. 1100

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

AN ACT to amend and reenact subsection 2 of section 43-23.3-03 and sections 43-23.3-04, 43-23.3-04.1, 43-23.3-09, 43-23.3-22, and 43-23.3-24 of the North Dakota Century Code, relating to real estate appraiser permits.

#### **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 2 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The board, or the board's designated representative, may:
  - a. Promote research and conduct studies relative to real estate appraising and sponsor educational activities.
  - b. Contract for services necessary to carry out this chapter.
  - c. Enter reciprocity agreements with other states.

**SECTION 2. AMENDMENT.** Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-23.3-04. Permit required - Exemptions.**

Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under section 43-23.3-11 or a permit under section 43-23.3-04.1. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

**SECTION 3. AMENDMENT.** Section 43-23.3-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-04.1. Issuance of permits to applicants licensed or certified by another state.**

The board shall issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state, and if grounds for denial of the application under section 43-23.3-18 do not exist. ~~If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state.~~ Within sixty days of filing a completed application, the board shall issue or deny the application and inform the applicant of the decision.

**SECTION 4. AMENDMENT.** Section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-09. Appraisal experience.**

The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by the board. The board ~~may~~shall require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.

**SECTION 5. AMENDMENT.** Section 43-23.3-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-22. Disciplinary proceedings.**

1. The board may deny an application for, refuse to renew, suspend, or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the applicant or permittee has:
  - a. Procured or attempted to procure a permit by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or through fraud or misrepresentation.
  - b. Failed to meet the minimum qualifications established under this chapter.
  - c. Paid money other than provided for by this chapter to any member or employee of the board to procure a permit.
  - d. Been convicted, including a conviction based upon a plea of guilty or nolo contendere, of a felony or of a crime that is substantially related to the qualifications, functions, and duties of a person developing and communicating appraisals to others.
  - e. Performed an act involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially that person or another person, or with the intent to injure substantially another person.
  - f. Violated any standard for the development or communication of appraisals as provided in this chapter.

- g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
  - h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.
  - i. Willfully violated this chapter or rules of the board.
  - j. Accepted an appraisal assignment when the employment is contingent upon the reporting of a predetermined estimate, analysis, or opinion, or if the fee is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.
  - k. Violated the confidential nature of governmental records to which the person gained access through employment or engagement as an appraiser by a governmental agency.
  - l. Had entry of a civil judgment against the person on grounds of fraud, misrepresentation, or deceit in the making of an appraisal.
2. In a disciplinary proceeding based upon a civil judgment, the permittee must be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.
  3. A signed or unsigned allegation from the public is not a complaint until the board determines there is reasonable cause to initiate a disciplinary proceeding against one or more applicants or permittees.

**SECTION 6. AMENDMENT.** Section 43-23.3-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-24. 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, and 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 20, 2015  
Filed March 20, 2015

## CHAPTER 302

### SENATE BILL NO. 2085

(Industry, Business and Labor Committee)  
(At the request of the North Dakota Board of Massage)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and section 43-25-08.1 of the North Dakota Century Code, relating to criminal history record checks for massage therapists; and to amend and reenact sections 43-25-05, 43-25-05.1, 43-25-06, 43-25-09, 43-25-10, 43-25-14, and 43-25-18 of the North Dakota Century Code, relating to massage therapist licensure.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>173</sup> **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 board of massage for applicants, licensees, or investigations under chapter 43-25.

**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.**

1. The governor shall appoint a board of massage, to consist of five members.
  - a. ~~Three of the members of the board must be massage therapists who are licensed in this state and annually work at least five hundred hours practicing massage in this state for at least the previous three years. These members must be appointed for terms of 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,~~
  - b. One member of the board must be appointed as a consumer member. To qualify as a consumer member an individual may not be or have been a massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services, and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year term term, staggered so that the term of one

<sup>173</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1105, chapter 97, and section 1 of House Bill No. 1125, chapter 98, and section 1 of Senate Bill No. 2077, chapter 99, section 1 of Senate Bill No. 2236, chapter 309, section 1 of House Bill No. 1153, chapter 297, section 3 of House Bill No. 1436, chapter 67, section 1 of Senate Bill No. 2145, chapter 100, and section 6 of Senate Bill No. 2215, chapter 96.

~~member expires each year expires with a licensed board member but not with the instructor board member.~~

- c. One member of the board must be an instructor at a school of massage that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.
  - d. 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.
2. 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 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-05.1. Powers and duties of the board.**

The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board may periodically shall inspect or cause to be inspected all massage establishments. The board and ~~its~~the board's agents are ~~authorized to~~may enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.
3. The secretary-treasurer ~~may~~shall prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.
4. The board may hire office personnel deemed necessary by ~~it~~the board for carrying on ~~its~~the board's official duties and shall set the compensation to be paid to the personnel.

**SECTION 4. AMENDMENT.** Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-06. Removal of members of board of massage - Officers of the board.**

The governor may remove from office ~~members~~a member of the board for ~~failure to maintain the qualifications for appointment,~~ for neglect of duties as required by this chapter ~~or,~~ for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on the member's resignation or death.

**SECTION 5.** Section 43-25-08.1 of the North Dakota Century Code is created and enacted as follows:

**43-25-08.1. Criminal history record checks.**

The board shall require an applicant under this chapter to submit to a statewide and nationwide criminal history record check. The board may require a licensee under this chapter 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 or licensee.

**SECTION 6. AMENDMENT.** Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-09. License - Display - Renewal - Renewal fee.**

1. Each license must be conspicuously displayed at the place of practice.
2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board.
3. Continuing education of at least ~~thirty-two~~twenty-four continuing education hours, or equivalent college credits, submitted every two years is a further requirement for renewal of the license. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. The board may accept continuing education attained by remote means. No more than ~~twelve~~nine 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 shall report ~~their~~ continuing education in odd-numbered years and even-numbered licensed individuals shall report ~~their~~ continuing education in even-numbered years, based on the calendar year.
  - b. ~~This subdivision applies for the~~licensed individuals during their initial licensure period. ~~Individuals licensed on or before May thirty-first of their initial year, who would normally be not required to 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~~the licensees would follow the normal renewal reporting cycles~~shall report continuing education pursuant to subdivision a.~~
  - c. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
4. If the board reasonably believes a massage therapist or applicant is ~~in~~has a physical or mental condition jeopardizing the health of those who seek relief from the individual, the board may require the individual to have a ~~physical~~an

appropriate examination by a competent medical qualified examiner approved by the board. If the individual has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.

5. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require production of a new certificate of physical examination and evidence of any required continued educational hours being completed.
6. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

**SECTION 7. AMENDMENT.** Section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-10. Disciplinary actions - Complaints.**

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 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.
2. A licensee who violates this chapter or any rule adopted by the board may be assessed a civil penalty of up to ~~one~~two hundred dollars.

3. A complaint may be submitted to the board by any person or on its own motion. A complaint ~~may~~must be signed by the complainant. The president may initiate an investigation of the complaint and report to the board.
4. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

**SECTION 8. AMENDMENT.** Section 43-25-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-14. Compensation of board members - Clerks.**

The board members ~~shall~~are entitled to receive compensation in an amount to be established by rule not to exceed one hundred dollars per day or prorated for partial days the member is actually engaged in the performance of other meetings and official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

**SECTION 9. AMENDMENT.** Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-18. Reciprocity.**

1. Any ~~person~~individual 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 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~~licensed~~, certifying to the fact of registration~~licensure~~ 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 April 8, 2015  
Filed April 8, 2015

## CHAPTER 303

### SENATE BILL NO. 2205

(Senator Bekkedahl)  
(Representatives Hawken, Hofstad, Keiser, Meier)

AN ACT to amend and reenact sections 43-28.1-01, 43-28.1-03, 43-28.1-05, 43-28.1-08, and 43-28.1-09 of the North Dakota Century Code, relating to the dentists' loan repayment program; to repeal sections 43-28.1-01.1, 43-28.1-02, 43-28.1-04, and 43-28.1-10 of the North Dakota Century Code, relating to the loan repayment program for dentists in public health and nonprofit dental clinics and new practice grants for dentists; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-28.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-01. Loan repayment program - Dentists - Defined need - Maximum amount of funds.**

Each year the state health council shall select, from a pool of applicants ~~no more than three~~, dentists who shall provide dental services ~~to communities in cities or surrounding areas, or both~~, in this state which the state health council identifies as having a defined need for dental services. The dentists selected from this pool of applicants may include dentists who will provide dental services in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic. The dentists are eligible to receive funds for the repayment of their education loans. The funds, which are payable over a ~~four-year~~five-year period, may not exceed ~~eightyone hundred~~ thousand dollars per applicant. If the state health council accepts any gifts, grants, or donations under this chapter, the council may select additional dentists for participation in the loan repayment program under this chapter.

**SECTION 2. AMENDMENT.** Section 43-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**~~43-28.1-03. Dentist selection criteria - Eligibility for loan repayment~~Criteria.**

- ~~1. In establishing the criteria regarding a dentist's eligibility for loan repayment funds under this chapter, the state health council shall include consideration of:~~
  - ~~a. The dentist's training in general dentistry or in a dental specialty and the extent to which such services are needed in a selected community~~
  - ~~b. The dentist's commitment to serve in a community that is in need of a dentist.~~
  - ~~c. The compatibility of the dentist with a selected community~~
  - ~~d. The date by which the dentist would be available for service to the selected community~~

- e. ~~The dentist's competence and professional conduct.~~
  - f. ~~The dentist's willingness to accept medicare and medicaid patients.~~
2. ~~A dentist who is selected to receive loan repayment funds under this chapter:~~
- a. ~~(1) May not have practiced dentistry full time in this state during the three years immediately preceding the application;~~
  - ~~(2) Must have graduated from an accredited graduate specialty training program in dentistry during the year immediately preceding the application or within one year after the date of the application; or~~
  - ~~(3) Must be enrolled in an accredited graduate specialty training program in dentistry; and~~
- b. ~~Must be licensed to practice dentistry in this state.~~
3. ~~Dentists selected shall contract to provide full-time dental services for a minimum of four years in one or more selected communities~~
4. ~~For the purposes of a dentist selected for loan payment who practices within fifteen miles [24.14 kilometers] of the city limits of Bismarck, Fargo, or Grand Forks, to qualify to receive a yearly disbursement under this chapter during that year of obligated service, the dentist must have:~~
- a. ~~Received dental medical payments of at least twenty thousand dollars in the form of medical assistance reimbursement; or~~
  - b. ~~Practiced at least two full workdays per week at a public health clinic or at a nonprofit dental clinic that uses a sliding fee schedule to bill the nonprofit dental clinic's patients. The health council shall establish criteria to be used in selecting qualified dentists and in identifying cities or surrounding areas, or both, that have a defined need for dental services. The criteria must include consideration of:~~
- a. The number of dentists already providing dental services in the city or surrounding areas, or both;
  - b. Access to dental services in the city and the surrounding areas;
  - c. How the dentist will provide dental services in a public health clinic, a practice with a focus on an underserved population, or a nonprofit dental clinic; and
  - d. The dentist's training in general dentistry or in a dental specialty and the extent to which such services are needed in the identified city or surrounding areas, or both.
2. For purposes of a dentist selected for loan payment under this chapter who practices within fifteen miles [24.14 kilometers] of the city limits of one of the three largest cities in the state, to qualify to receive a yearly disbursement under this chapter during that year of obligated service, the dentist must have:

- a. Received dental medical payments of at least twenty thousand dollars in the form of medical assistance reimbursement; or
  - b. Practiced at least two full workdays per week at a public health clinic or at a nonprofit dental clinic that uses a sliding fee schedule to bill the nonprofit dental clinic's patients.
3. The health council may consult with public and private sector entities in establishing criteria and evaluating needs based on the criteria.

**SECTION 3. AMENDMENT.** Section 43-28.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-05. Eligible loans.**

The state health council may provide for loan repayment funds to a dentist who has received an education loan. The council may not provide funds for the repayment of any loan that is in default at the time of the application. The amount of repayment must be related to the dentist's outstanding education loans. A dentist is eligible to receive loan repayment funds in an amount equal to the outstanding balance of the dentist's education loans with applicable interest, or eightyone hundred thousand dollars, whichever is less. Loan repayment funds may not be used to satisfy other service obligations under similar programs.

**SECTION 4. AMENDMENT.** Section 43-28.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-08. Payment.**

The state health council may not provide any loan repayment funds to a dentist under this chapter until the dentist has practiced at least six months on a full-time basis in the selected community city or surrounding areas, or both, the state health council has identified as having a defined need for dental services. Loan repayment funds for a year of obligated service are payable by the state health council no later than the end of the fiscal year in which the dentist completes the year of obligated service.

**SECTION 5. AMENDMENT.** Section 43-28.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-28.1-09. Gifts, grants, and donations - Continuing appropriation.**

The state health council may accept any conditional or unconditional gift, grant, or donation for the purpose of providing funds for the repayment of dentists' educational loans. If any entity desires to provide funds to the council to allow an expansion of the program beyond the ~~three~~ dentists contemplated by this chapter, the entity shall commit to fund fully the expansion for a period of ~~four~~five years. The council may contract with any public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of this chapter. All money received as gifts, grants, or donations under this section is appropriated as a continuing appropriation to the state health council for the purpose of providing funds for the repayment of additional dentists' educational loans.

**SECTION 6. REPEAL.** Sections 43-28.1-01.1, 43-28.1-02, 43-28.1-04, and 43-28.1-10 of the North Dakota Century Code are repealed.

**SECTION 7. APPLICATION.** Sections 43-28.1-01.1, 43-28.1-02, 43-28.1-04, and 43-28.1-10 continue to apply to any dentists who received a grant under those sections before the effective date of this Act.

Approved April 27, 2015  
Filed April 27, 2015

## CHAPTER 304

### HOUSE BILL NO. 1274

(Representatives Fehr, D. Anderson, Hofstad, Lefor)

AN ACT to amend and reenact sections 43-32-02, 43-32-08, 43-32-12, 43-32-13, 43-32-14, 43-32-17, 43-32-19.1, 43-32-20, 43-32-20.1, 43-32-21, 43-32-26, 43-32-27, 43-32-27.1, 43-32-30, and 43-32-34 of the North Dakota Century Code, relating to the membership, powers, and duties of the state board of psychologist examiners; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-32-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-32-02. State board of psychologist examiners - How appointed - Qualifications.**

The governor shall appoint a state board of psychologist examiners consisting of ~~five~~seven members. ~~At One board member must be designated a public member who is a resident of this state, is at least twenty-one years of age, and is not affiliated with any group or profession that provides or regulates health care in any form. Of the remaining six board members, at least one member must be engaged primarily in providing service in psychology, and at least one member must be engaged primarily in teaching, training, or research in psychology. Each~~Except the public member, each member must:

1. Be a resident of this state.
2. Be a ~~psychologist~~-licensed under this chapter for at least five years.
3. ~~Have received a doctorate degree in psychology from a school or college at least five years before appointment.~~
4. ~~Have actively engaged in the practice of teaching or research of psychology for at least five years.~~

**SECTION 2. AMENDMENT.** Section 43-32-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-32-08. Rules.**

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. ~~The educational program rules for industrial-organizational psychologists must take into account the availability~~

~~of professionally accredited programs in the field of industrial-organizational psychology.~~

**SECTION 3. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and fee for licensure and registration.**

The board shall adopt rules establishing the amount of the application fee for licensure and registration ~~by written and oral examination and by reciprocity~~. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 4. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-13. Annual license and registration fee.**

Before ~~January first~~November fifteenth of each year, every licensee and registrant shall pay to the secretary of the board an annual fee determined by the board ~~not to exceed one hundred fifty dollars~~by rule. The secretary of the board, upon receipt of payment of the annual fee, shall issue the licensee or registrant a certificate of annual renewal, which commences on January first. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail or electronically mail a renewal notice to each licensee and registrant at the address or electronic mail address on file with the board.

**SECTION 5. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-14. Payment of delinquent annual fee - Reinstatement.**

An individual whose license or registration issued under this chapter ~~was revoked~~has expired for failure to pay the annual fee must be reinstated and the license or registration renewed if, within one year from the date of ~~revocation~~expiration, the individual pays to the secretary of the board the amount of the annual fees in default and a late fee in the amount of ~~twenty dollars~~established by the board by rule.

**SECTION 6. AMENDMENT.** Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-17. License required for practice - Titles.**

1. Except as otherwise provided under this chapter, a person may not engage in the practice of psychology unless that person is licensed as a psychologist or is registered as a psychology resident under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology unless that person is licensed as a psychologist or industrial-organizational psychologist or is registered as a psychology resident or industrial-organizational psychology resident under this chapter. Except as otherwise provided under this chapter, a person may not engage in the practice of applied behavior analysis unless that person is a

psychologist, is licensed as an applied behavior analyst, or is registered and supervised as an applied behavior analyst as provided under this chapter.

2. A person may not use the title "psychologist" or similar title unless that person is licensed as a psychologist. A person may not use the titles "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" unless that person is licensed as a psychologist or industrial-organizational psychologist. A person may not use the title "applied behavior analyst" or similar title unless that person is licensed as an applied behavior analyst. A person may not use the title "registered applied behavioral analyst" or similar title unless that person is registered and supervised as a registered applied behavior analyst.
3. A person may not use the title "psychology resident" or similar title unless that person is registered as a psychology resident. A person may not use the titles "industrial psychology resident", "organizational psychology resident", or "industrial-organizational psychology resident" unless that person is registered as a psychology resident or industrial-organizational psychology resident.

**SECTION 7. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Licensing ~~applicant~~ registering applicants licensed or registered in other jurisdictions.**

1. ~~The board may grant a license or registration to an applicant, who is licensed or registered in good standing in another jurisdiction, that imposes requirements for licensure or registration and who passes the oral examination on the law and rules regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements:~~
  - a. ~~The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state. Meets standards established by the board; or~~
  - b. ~~Thels an applicant for licensure as a psychologist who holds a certificate of professional qualification in psychology issued by an entity approved by the board, such as the association of state and provincial psychology boards or its successor.~~
2. As a condition to qualify for licensure or registration under subsection 1, the board may require the applicant pass an oral examination on the laws and rules regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis, as appropriate to the licensure or registration sought by the applicant.
3. Notwithstanding any contrary provision of this chapter, the board may issue a license or registration as authorized under chapter 43-51.
4. ~~The board shall~~may grant a provisional license or registration to an applicant ~~to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided if~~ the applicant is:
  - a. ~~Licensed~~ licensed or registered and is in good standing in another jurisdiction; or

- b. Certified in good standing with the national behavior analyst certification board is certified by a professional organization that is identified by the board by rule. The board may not grant a provisional license or registration under this subsection if in another jurisdiction, within the previous five years, the applicant had a disciplinary action against the applicant's license or registration.
5. Except as otherwise provided under this chapter, and in accordance with rules adopted by the board, the board shall issue a limited practice certificate to an applicant who is licensed or registered in another jurisdiction to practice psychology, industrial-organizational psychology, or applied behavior analysis. A limited practice certificate issued under this subsection authorizes the practice of psychology, industrial-organizational psychology, or applied behavior analysis in this state for no more than thirty days in a calendar year.

**SECTION 8. AMENDMENT.** Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-20. Licensing - Written and oral examination - Qualifications of applicants.**

The board shall issue a license to each applicant who files an application upon a form and in a manner the board prescribes, submits the required fee, and meets the requirements of subsection 1 or 2.

1. An applicant for licensure as a psychologist shall demonstrate all of the following:
  - a. The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct adopted by the board by rule.
  - b. The applicant has received, from a school or college, a doctorate degree in a program which meets any of the following requirements:
    - (1) ~~The program is accredited by the American psychological association or the Canadian psychological association.~~
    - (2) ~~The program is designated as a doctoral program in psychology by the association of state and provincial psychology boards.~~
    - (3) ~~The program that is accredited as a doctoral program in psychology by an accrediting body approved by the board by rule.~~
  - c. The applicant has passed the examinations, written; or oral, or both, as the board determines necessary.
  - d. The applicant has completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which may be postdoctoral. Both years of experience must comply with the board's rules.
2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate all of the following:

- a. The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct adopted by the board by rule.
- b. The applicant has received, from a school or college, a doctorate degree in a program of studies accredited by ~~the American psychological association or an accrediting body approved by the board by rule, which may include the American psychological association.~~
- c. The applicant has passed the examinations, written, or oral, or both, as the board determines necessary.
- d. The applicant has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:
  - (1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.
  - (2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.

**SECTION 9. AMENDMENT.** Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-20.1. Postdoctoral supervised psychological employment.**

This section applies to postdoctoral supervised employment in the practice of psychology and industrial-organizational psychology. ~~Supervision may only be performed by a psychologist or industrial-organizational psychologist with~~Before starting supervised employment, a psychologist with at least three years of post-license practice experience must be identified as the primary supervisor. The primary supervisor must have a competency in supervision in professional psychology in the general area of practice being supervised.

~~Supervision must include at least two hours of regularly scheduled direct supervision a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis occur weekly and consist of at least one hundred hours of direct supervision, either face-to-face or through distance communications. The remaining hour~~At least fifty of the hours of supervision must be with the primary supervisor. Additional hours of supervision may be with other professionals designated by the supervisor and competent in the area of practice being supervised. The board may adopt rules to prorate the two hours per week of supervision for individuals preparing for licensure on a part-time basis.

The board may adopt rules regarding postdoctoral psychology and industrial-organizational psychology supervision requirements and reporting.

**SECTION 10. AMENDMENT.** Section 43-32-21 of the North Dakota Century Code is amended and reenacted as follows:

### 43-32-21. Consideration of application and notice to applicant.

Upon investigation of the application and other evidence submitted, the board, ~~not less than thirty days before the examination,~~ shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice must state the reasons for rejection and explain the right to a hearing under chapter 28-32, if a hearing is requested within thirty days.

**SECTION 11. AMENDMENT.** Section 43-32-26 of the North Dakota Century Code is amended and reenacted as follows:

### 43-32-26. Issuance and display of license.

The board is the sole agency empowered to examine competence in the practice of psychology. A license certificate of license or registration issued by the board must show the full name of the licensee, have a serial number, be signed by the president of the board, and be attested by the secretary under the board's adopted seal. The license issued by the board under this chapter must be prominently displayed at the principal place of business at which the licensee practices.

**SECTION 12. AMENDMENT.** Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

### 43-32-27. Denial - Revocation or suspension of license or registration - Grounds.

1. The board, after notice, hearing, and an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any license or registration issued or applied for under this chapter and may otherwise discipline a licensee, a registrant, or an applicant upon proof the applicant, registrant, or licensee:
  - a. Has been convicted of an offense determined by the board to have a direct bearing upon an individual's ability to serve the public ~~as a psychologist or industrial-organizational psychologist in the practice of psychology or applied behavior analysis,~~ or if the board finds, after the conviction of any offense, that an individual is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. Is unable to practice psychology or applied behavior analysis with reasonable skill and safety to clients or patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.
  - c. Has impersonated another individual holding a ~~psychology or industrial-organizational psychology~~ license or registration issued under this chapter or allowed another person to use the licensee's license or registration.
  - d. Has used fraud or deception in applying for a license or registration or in taking an examination under this chapter.
  - e. Has allowed the licensee's or registrant's name or license or registration issued under this chapter to be used in connection with any person who performs psychological or applied behavior analysis services outside of the area of that person's training, experience, or competence.

- f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.
  - g. Has engaged in any form of unethical conduct as defined in ethical principles of psychologists and code of conduct of the American psychological association adopted by the board by rule.
  - h. Has become grossly negligent in the practice of psychology or industrial-organizational psychology applied behavior analysis.
  - i. Has willfully or negligently violated this chapter.
  - j. Has engaged in an act in violation of rules adopted by the board.
  - k. Has had a license or registration revoked or suspended or was disciplined in another jurisdiction.
2. The board may assess costs incurred by the board related to investigations and disciplinary actions. By rule, the board may set fines for minor infractions of this chapter.
  3. An individual whose license or registration has been revoked under this section may not reapply for licensure or registration for at least two years after the date of revocation.
  4. Other than the term "in good standing", by rule, the board shall define terms related to license status, such as "revoked", "suspended", "inactive", and "probationary".

**SECTION 13. AMENDMENT.** Section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-27.1. Complaints - Investigations.**

1. A person aggrieved by the actions of a licensee, registrant, or psychology resident may file a written complaint statement with the board citing the specific allegations of misconduct by the licensee. The board shall notify the licensee, registrant, or psychology resident of the complaint allegation and request a written response from the licensee. The board may establish procedural exceptions for processing multiple complaints allegations from the same complainant person.
2. The board may investigate a complaint on the board's own motion shall determine if the information in an allegation warrants investigation as a complaint, without requiring the identity of the complainant source of the information to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the complainant source.
3. A licensee, registrant, or psychology resident who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or client records if reasonably requested by the board and accompanied by the appropriate release.

4. In order to pursue an investigation, the board may subpoena and examine witnesses and records, including patient and client records, and may copy, photograph, or take samples of the records. The board may require the licensee, registrant, or psychology resident to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient and client records released to the board are not public records. The board may adopt rules to assign, define duties, and compensate an investigator to assist the board to process a complaint.
5. Unless a patient or client release is on file allowing the release of information at the public hearing, patient and client records acquired by the board in the board's investigation are confidential and closed to the public. All board meetings at which patient or client testimony or records are taken or reviewed are confidential and closed to the public. If patient or client testimony or records are not taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

**SECTION 14. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-30. Persons exempt from this chapter.**

This chapter does not apply to:

1. A student or intern pursuing a course of study in psychology, industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist, industrial-organizational psychologist, or applied behavior analyst. The student or intern may not use the title "psychologist", "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status and the supervisor must be clearly stated.
2. ~~A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology, industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.~~
3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, applied behavior analysis, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.
- ~~4.3.~~ An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
- ~~5.4.~~ A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity,

whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.

- ~~6-5.~~ An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
- ~~7-6.~~ A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
- ~~8-7.~~ An individual providing applied behavior analysis services to an individual in a public school setting.
- ~~9-8.~~ An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant ~~or an~~ applied behavior analyst, or psychologist.
- ~~10-9.~~ An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst.
- ~~11-10.~~ An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-30 within the body of knowledge and scope of professional practice of occupational therapy.

**SECTION 15. AMENDMENT.** Section 43-32-34 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-34. Applied behavior analysis - Renewal - Fees.**

1. The board shall issue a license or registration to each applicant who files an application for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst upon a form and in a manner the board prescribes; submits the required fee established by the board; and demonstrates the applicant meets the requirements of subsection 2.
2. An applicant under this section shall demonstrate the applicant:
  - a. Has met board-approved education requirements, such as the education requirements of the board-certified behavior analyst standards;

- b. Has passed a board-approved demonstration of professional competence, such as a standardized examination specific to the profession such as the board-certified behavior analyst examination; and
  - c. ~~Is credentialed as a behavior analyst by a board-approved credentialing entity, such as the behavior analyst certification board; and~~
  - d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst.
3. The board may withhold, deny, revoke, or suspend a license or registration for applied behavior analyst applied for or issued under this chapter and otherwise may discipline a license or registration holder or applicant in the same manner provided under section 43-32-27.
  4. A complaint regarding or board investigation of a licensed or registered applied behavior analyst is filed or conducted in the same manner as provided under section 43-32-27.1.
  5. ~~If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:~~
    - a. ~~A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.~~
    - b. ~~A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.~~
    - c. ~~Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.~~

Approved April 9, 2015  
Filed April 9, 2015

## CHAPTER 305

### SENATE BILL NO. 2189

(Senators Klein, Dotzenrod, Unruh)  
(Representatives Laning, Zubke)

AN ACT to amend and reenact sections 43-35-05, 43-35-06, 43-35-07, 43-35-09, 43-35-14, and 43-35-22 of the North Dakota Century Code, relating to the board of water well contractors; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-35-05 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-35-05. Officers - Office.**

The members of the board shall meet annually ~~on the second Monday~~ in July at a time and place designated by the president, ~~except that the first meeting must be held in the office of the state engineer at ten a.m., to~~ chairman. ~~The board shall select from their number the board's membership a president, vice president, chairman, vice chairman, and a secretary-treasurer. The secretary-treasurer need not be a member of the board.~~ Additional board meetings may be provided for in the bylaws or rules and regulations adopted by the board.

**SECTION 2. AMENDMENT.** Section 43-35-06 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-35-06. Secretary-treasurer ~~bond~~ - Bond - Executive officer.**

Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory to the board for the faithful performance and discharge of the secretary-treasurer's duties in an amount determined by the board, the premium for which is to be paid from board funds. ~~The board shall appoint one of its members to serve as the executive officer for the board.~~

**SECTION 3. AMENDMENT.** Section 43-35-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-35-07. Compensation and reimbursement of expenses.**

Each appointive member of the board is entitled to receive ~~sixty-two dollars and fifty cents~~ up to one hundred twenty-five dollars compensation per day and ~~must be reimbursed~~ is entitled to receive reimbursement for expenses in the same amounts as provided for in sections 44-08-04 and 54-06-09 while attending board meetings or otherwise engaged in the official business of the board. The board shall establish the compensation rate by rule.

**SECTION 4. AMENDMENT.** Section 43-35-09 of the North Dakota Century Code is amended and reenacted as follows:

### **43-35-09. Deposit of fees - Use and appropriation of funds.**

All fees received by the treasurer under this chapter must be deposited to the credit of the board in the Bank of North Dakota and disbursed only on order of the ~~president~~chairman and secretary-treasurer. Funds collected for certifying and inspections may be expended in such manner as the board deems necessary to best carry out the provisions of this chapter. All funds accruing to the credit of the state board of water well contractors are hereby permanently appropriated to the board for the purpose of this chapter.

**SECTION 5. AMENDMENT.** Section 43-35-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-35-14. Bond required.**

Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond ~~in the amount of two thousand dollars~~ conditioned for the faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with this chapter. ~~The required amount of a surety bond is fifteen thousand dollars for a water well contractor and is two thousand dollars for a monitoring well, pump and pitless unit, or geothermal system installation contractor.~~

**SECTION 6. AMENDMENT.** Section 43-35-22 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-35-22. ~~Contracting without certification~~Violation of chapter - Penalty.**

1. Any person contracting to drill a water well or monitoring well, ~~drill~~install a pump or pitless unit, or drill a geothermal system for another without being certified in accordance with this chapter, ~~or or otherwise violating any person that willfully violates a provision of this chapter, is guilty of an infraction a class B misdemeanor.~~
2. In addition to criminal sanctions that may be imposed, the board or the district court may assess the cost to repair any damage caused by the violation, any costs incurred by the board in the action, and a civil penalty against a person that violates any provision of this chapter or any rule adopted by the board. The civil penalty may not exceed ten thousand dollars. The civil penalty may be adjudicated by the district court or through an administrative hearing under chapter 28-32.
3. If a person against which a civil penalty was assessed after an administrative hearing does not pay or appeal the civil penalty within thirty days of receiving notice of the order, interest begins to accrue on the unpaid amount of the civil penalty at the rate of twelve percent per annum and the board may pursue a judgment from the district court. Notwithstanding section 57-20-22, a violator shall pay to the board all interest and penalties. The proceeds of any civil penalty or interest received by the board, after retention of any costs incurred by the board in the action, must be transferred to the state treasurer for deposit in the state general fund.

**SECTION 7. EMERGENCY.** Section 3 of this Act is declared to be an emergency measure.

Approved April 13, 2015  
Filed April 13, 2015

## CHAPTER 306

### SENATE BILL NO. 2295

(Senators Dever, Warner)  
(Representatives Hofstad, Mooney, Rohr)

AN ACT to amend and reenact sections 43-39-01 and 43-39-04 and subdivision d of subsection 1 of section 43-39-10 of the North Dakota Century Code, relating to the regulation of athletic trainers; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-39-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-39-01. Definitions.**

1. "Athletic trainer" means a personan individual with specific qualifications set forth in section 43-39-05, who is providing athletic training.
2. "Athletic training" means doing any of the practice of prevention, recognition, evaluation, management, treatment, and disposition of athletic injuries. The term also means rehabilitation of athletic injuries, if under the order of a licensed physician. The term includes organization and administration of educational programs, athletic facilities, and the education and counseling of the public following under the guidance of a physician:
  - a. Preventing, recognizing, and evaluating injuries and illnesses sustained while participating in physical activity;
  - b. Managing and administering the initial treatment of injuries or illnesses sustained while participating in physical activity;
  - c. Giving emergency care or first aid for an injury or illness sustained while participating in physical activity;
  - d. Under verbal, standing, or written orders, except in the case of providing services in a clinical setting which requires written orders, rehabilitating injuries or illnesses sustained while participating in physical activity;
  - e. Under verbal, standing, or written orders, except in the case of providing services in a clinical setting which requires written orders, rehabilitating and physically reconditioning injuries or illnesses that impede or prevent an individual from returning to participating in physical activity, if the individual recently participated in, and intends to return to participation in, physical activity;
  - f. Establishing or administering risk management, conditioning, and injury prevention programs;
  - g. Providing injury screening or physician extender services; or

h. Referring a patient to an appropriate health care provider as needed.

3. "Board" means the North Dakota board of athletic trainers established in section 43-39-02.
4. "Physical activity" means any moderate or vigorous activity that requires physical strength, agility, range of motion, repetitive motion, speed, or stamina during participation in exercise, sports, games, recreation, performance arts, stretching, wellness, fitness, military, industrial, or public safety activities.
5. "Physician" means a doctor of medicinean individual licensed to practiceas a physician under chapter 43-17.

**SECTION 2. AMENDMENT.** Section 43-39-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-39-04. Unlawful practice.**

1. ~~No~~A person may not practice athletic training or hold that person out as being an athletic trainer in this state unless that person is an individual licensed in accordance with this chapter.
2. ~~No~~A person may not consult, teach, or supervise or hold that person out as being able to consult, teach, or supervise athletic training curricular courses in this state unless that person is an individual licensed in accordance with this chapter or chapter 43-17; or possesses a degree in a health-related field.
3. ~~No~~A person may not represent that person as being a licensed athletic trainer or use in connection with that person's name any letters, words, or insignia indicating or implying that the person is a licensed athletic trainer unless that person is an individual licensed in accordance with this chapter.

<sup>174</sup> **SECTION 3. AMENDMENT.** Subdivision d of subsection 1 of section 43-39-10 of the North Dakota Century Code is amended and reenacted as follows:

- d. ~~Is guilty of treating or undertaking to treat ailments of human beingsan individual's injury or illness, except as authorized pursuant to this chapter, or undertaking to practice independent of the orderguidance or rehabilitation order of a licensed physician, or is guilty of any act derogatory to the dignity and morals of the profession of athletic training.~~

Approved April 20, 2015  
Filed April 20, 2015

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<sup>174</sup> Section 43-39-10 was also amended by section 35 of House Bill No. 1153, chapter 297.

## CHAPTER 307

### HOUSE BILL NO. 1049

(Legislative Management)  
(Human Services Committee)

AN ACT to create and enact a new section to chapter 43-45 of the North Dakota Century Code, relating to loans for certain behavioral health professions; to amend and reenact section 43-45-04 of the North Dakota Century Code, relating to duties of the board of addiction counseling examiners; to provide for a statement of legislative intent; to provide for reports to the legislative management; to provide an appropriation; to provide a continuing appropriation; and to provide for a transfer.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 43-45-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-04. Board power, duties, and authority.**

1. The board shall:
  - a. Administer and enforce the provisions of this chapter.
  - b. Evaluate the qualifications of applicants for a license to practice addiction counseling and issue licenses under this chapter.
  - c. Establish ethical standards of practice for persons holding a license to practice addiction counseling in this state.
  - d. Establish continuing education requirements and approve providers of continuing education.
  - e. Approve clinical training programs.
  - f. Register clinical trainees.
  - g. Register interns.
  - h. Register clinical supervisors.
  - i. Register licensees for private practice.
  - j. Approve and administer examinations.
  - k. Periodically evaluate initial licensure coursework requirements and clinical training requirements to ensure the requirements are up to date and do not serve as an undue barrier to licensure.
2. The board may:

- a. Adopt rules under chapter 28-32 to implement this chapter.
- b. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
- c. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
- d. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
- e. Collect fees for examinations, initial licensures, renewal of licenses, late renewals, private practice registrations, renewal of private practice registrations, approval of continuing education providers, and administrative fees. The fees must be established by rule in amounts necessary to compensate the board for administration and enforcement of this chapter.
- f. Employ persons to assist the board in carrying out its duties under this chapter.

**SECTION 2.** A new section to chapter 43-45 of the North Dakota Century Code is created and enacted as follows:

**Addiction counseling internship - Loan program - Revolving fund - Continuing appropriation.**

1.
  - a. The Bank of North Dakota shall develop and implement a program under which loans may be provided to qualified individuals participating in a paid or unpaid internship at a licensed substance abuse treatment facility in this state, in order to obtain licensure as an addiction counselor.
  - b. The Bank of North Dakota shall determine all terms applicable to the time and manner in which loans made under this section must be repaid.
  - c. Interest on outstanding loans under this section must accrue at the Bank of North Dakota's current base rate, but may not exceed six percent per annum.
  - d. The maximum loan for which an applicant may qualify under this section is seven thousand five hundred dollars.
  - e. This subsection is applicable only to individuals beginning an internship after June 30, 2015.
2. The Bank of North Dakota shall maintain a revolving loan fund for the purpose of making loans under this section. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans under this section are appropriated to the Bank on a continuing basis.

**SECTION 3. LEGISLATIVE INTENT - ASSESSMENT OF INTERNSHIPS FOR ADDICTION COUNSELORS.** The sixty-fourth legislative assembly recognizes that as dedicated funding becomes available in the future, the center for rural health at the university of North Dakota school of medicine and health sciences has the infrastructure, expertise, experience, and established relationships to provide a

statewide assessment of viable internship sites for addiction counselors and to implement and provide oversight for such a program, in partnership with academic professionals in addiction counseling.

**SECTION 4. BOARD OF ADDICTION COUNSELING EXAMINERS - LEGISLATIVE MANAGEMENT REPORT.** The board of addiction counseling examiners shall evaluate the initial licensure coursework requirements and clinical training requirements noted in subsection 1 of section 43-45-04. Before July 1, 2016, the board of addiction counseling examiners shall report on the status of the periodic evaluation of those requirements to the legislative management.

**SECTION 5. APPROPRIATION - TRANSFER - ADDICTION COUNSELOR INTERNSHIP LOAN PROGRAM - REVOLVING FUND.** There is appropriated out of any moneys in the student loan trust fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, which the director of the office of management and budget shall transfer to the Bank of North Dakota, for purposes of the addiction counselor internship loan program revolving fund, as created by section 2 of this Act.

Approved April 27, 2015  
Filed April 27, 2015

## CHAPTER 308

### SENATE BILL NO. 2191

(Senators Unruh, Holmberg, Mathern)  
(Representatives Rick C. Becker, Boschee, Meier)

AN ACT to create and enact a new subsection to section 43-17-02 and chapter 43-61 of the North Dakota Century Code, relating to the regulation of acupuncturists; to amend and reenact sections 43-17-41, 43-57-01, 43-57-03, 43-57-06, 43-57-07, and 43-57-11 of the North Dakota Century Code, relating to duties of acupuncturists and the board of integrative health care; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>175</sup> **SECTION 1.** A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

An acupuncturist duly licensed to practice in this state pursuant to the statutes regulating such profession.

<sup>176</sup> **SECTION 2. AMENDMENT.** Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17-41. Duty of physicians and others to report injury - Penalty.**

1. Any physician, physician assistant, naturopath licensed under chapter 43-58, acupuncturist licensed under chapter 43-61, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:
  - a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or
  - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.
2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.
3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the

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<sup>175</sup> Section 43-17-02 was also amended by section 2 of Senate Bill No. 2236, chapter 309, and section 18 of House Bill No. 1153, chapter 297.

<sup>176</sup> Section 43-17-41 was also amended by section 1 of Senate Bill No. 2335, chapter 298.

injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, naturopath, acupuncturist licensed under chapter 43-61, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.

4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.
5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

**SECTION 3. AMENDMENT.** Section 43-57-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-01. Definitions.**

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

1. "Board" means the state board of integrative health care.
2. "Licensee" means an individual licensed by the board under this chapter and under chapter 43-58 ~~or~~ 43-59, or 43-61.

**SECTION 4. AMENDMENT.** Section 43-57-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-03. Powers and duties of board.**

1. The board shall adopt rules:
  - a. To administer and enforce this chapter and chapters 43-58 ~~and~~ 43-59, and 43-61;
  - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
  - c. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
  - d. That establish educational standards for each profession regulated by the board as appropriate; and
  - e. That set fees for licensure, which may include:
    - (1) Application fee;
    - (2) License fee;
    - (3) Renewal fee;

- (4) Late fee;
  - (5) Administrative fees; and
  - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
  3. The board may employ staff and provide for staff compensation.
  4. The board shall receive all moneys collected under this chapter, chapter 43-58, ~~and chapter 43-59, and 43-61~~ and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.
  5. The board may establish continuing education requirements for license renewal.
  6. The board may adopt a code of ethics for each profession regulated by the board.
  7. The board may adopt rules allowing students to practice under licensed supervision.

**SECTION 5. AMENDMENT.** Section 43-57-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-06. Issuance of license.**

If the board determines that an applicant possesses the qualifications required under this chapter and under chapter 43-58 ~~or~~, 43-59, or 43-61, the board shall issue a license to the applicant.

**SECTION 6. AMENDMENT.** Section 43-57-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-07. License renewal - Continuing education.**

1. A license is effective when granted by the board.
2. A license issued under chapter 43-58 or 43-59 expires on December thirty-first of every odd-numbered year. A license issued under chapter 43-61 expires on December thirty-first of every even-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of any continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the individual may not practice until a new application is made and a license is granted by the board.
5. At the time of renewal, the board shall require each applicant to present satisfactory evidence that the applicant has completed any continuing education requirements specified by the board.

6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory evidence of completion of any continuing education requirements, the licensee must reapply for licensure.
7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

**SECTION 7. AMENDMENT.** Section 43-57-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-57-11. Enforcement - Penalty.**

A person that violates this chapter, ~~or chapter 43-58, or chapter 43-59, or 43-61~~ is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter, ~~or chapter 43-58, or chapter 43-59, or 43-61~~ without proof of actual damages sustained by any person.

**SECTION 8.** Chapter 43-61 of the North Dakota Century Code is created and enacted as follows:

**43-61-01. Definitions.**

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

1. "Acupuncture" means an East Asian system of health care that maintains and restores the health of patients through treatments that include patient education, botanical medicine, qi gong, tai qi, or the stimulation of a certain point or points on or below the surface of the body, including traditional meridian points and ashi trigger points by the insertion of presterilized, filiform, disposable needles with or without electronic stimulation or by utilizing manual or thermal techniques.
2. "Acupuncturist" means an individual licensed to practice acupuncture under this chapter.
3. "Approved acupuncture program" means a board-approved graduate level educational program that is offered by an institution of higher education and accredited by a national or regional agency recognized by the United States department of education, or another such equivalent program approved by the board which:
  - a. Is accredited, has the status of candidate for accreditation, or meets the standards of an organization approved by the board, such as the accreditation commission of acupuncture and oriental medicine.
  - b. Has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency under subdivision a and complies with the board's rules.
4. "Board" means the state board of integrative health care created under chapter 43-57.

**43-61-02. Exemptions.**

Some of the therapies used by an acupuncturist, such as the use of botanical medicine, foods, and such physical forces as needling and touch are not the exclusive privilege of acupuncturists. This chapter does not restrict or apply to the scope of practice of any other profession licensed, certified, or registered under the laws of this state.

**43-61-03. License required - Title restrictions.**

1. Effective January 1, 2016, an individual may not practice any form of acupuncture without a current acupuncture license issued by the board.
2. An acupuncturist may use the title "Licensed Acupuncturist" and the abbreviation "LAc" when used to reflect that title. Effective January 1, 2016, an individual who uses these terms or initials as identification without having received an acupuncture license under this chapter is engaging in the practice of acupuncture without a license.

**43-61-04. Qualifications for licensure.**

To obtain a license to practice acupuncture in this state, an application must be made to the board. The application must be upon the form adopted by the board and must be made in the manner prescribed by the board.

**43-61-05. Application for licensure.**

1. An applicant for acupuncture licensure shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is of good moral character and satisfied all of the requirements of this chapter and chapter 43-57, including:
  - a. Successful completion of an approved acupuncture program;
  - b. Successful completion of an examination prescribed or endorsed by the board, such as the national certification commission for acupuncture and oriental medicine;
  - c. Physical, mental, and professional capability for the practice of acupuncture in a manner acceptable to the board; and
  - d. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter and chapter 43-57. The board may modify this restriction for cause.
2. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

**43-61-06. Initial applications - Education testing exception.**

Notwithstanding the education and examination requirements for licensure under subdivisions a and b of subsection 1 of section 43-61-05, if an applicant was a bona fide resident of the state from January 1, 2015, through December 31, 2015, was practicing acupuncture in this state immediately preceding January 1, 2016, was

required to apply for licensure under this chapter in order to continue that practice, and does not meet the educational or examination requirements or both, the board may issue a license or limited license to that applicant if, following an examination of the applicant's education and experience, the board determines the applicant has sufficient education and experience to prepare the applicant to practice acupuncture.

**43-61-07. Licensure granted without examination to individuals licensed in other states.**

1. The board may issue an acupuncture license by endorsement to an applicant who complies with licensure requirements and who passed an examination given by a recognized certifying agency approved by the licensing agency if the board determines the examination was equivalent in every respect to the examination required under this chapter.
2. The board may enter reciprocal agreements with licensing agencies of other states providing for reciprocal waiver of further examination or any part of the examination.
3. If an applicant is exempt from the examination required under this chapter, the applicant shall comply with the other requirements for licensure. The board may adopt rules allowing for temporary and special licensure to be in effect during the interval between board meetings.

**43-61-08. Practice of acupuncture.**

1. An acupuncturist may practice acupuncture as a limited practice of the healing arts as exempted under section 43-17-02. An acupuncturist may not:
  - a. Prescribe, dispense, or administer any prescription drug; or
  - b. Claim to practice any licensed health care profession or system of treatment other than acupuncture unless holding a separate license in that profession.
2. An acupuncturist may prescribe and administer for preventive and therapeutic purposes the following therapeutic substances and methods:
  - a. Patient education, botanical medicine, qi gong, and tai qi; and
  - b. The stimulation of a certain point or points on or below the surface of the body, including traditional meridian points and ashi trigger points by the insertion of presterilized, filiform, or disposable needles with or without electronic stimulation or by utilizing manual or thermal techniques.

**43-61-09. Public health duties.**

An acupuncturist has the same duties as a licensed physician with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice established under this chapter and chapter 43-57.

**43-61-10. Employment by hospitals.**

A hospital may employ an acupuncturist in the same manner as provided under section 43-17-42.

Approved March 23, 2015

Filed March 23, 2015

## CHAPTER 309

### SENATE BILL NO. 2236

(Senator J. Lee)  
(Representative Porter)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, a new subsection to section 43-17-02, and a new chapter to title 43 of the North Dakota Century Code, relating to the regulation and licensure of technical personnel who perform medical imaging procedures and radiation therapy treatments; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>177</sup> **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 medical imaging and radiation therapy board of examiners for licensure and licensees under section 3 of this Act, except that criminal history record checks for licensees need not be made unless required by the board.

<sup>178</sup> **SECTION 2.** A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

An individual duly licensed to practice medical imaging or radiation therapy in this state under section 3 of this Act.

**SECTION 3.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

#### **Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board of examiners.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of certification of medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.

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<sup>177</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1105, chapter 97, and section 1 of House Bill No. 1125, chapter 98, and section 1 of Senate Bill No. 2077, chapter 99, section 1 of Senate Bill No. 2085, chapter 302, section 1 of House Bill No. 1153, chapter 297, section 3 of House Bill No. 1436, chapter 67, section 1 of Senate Bill No. 2145, chapter 100, and section 6 of Senate Bill No. 2215, chapter 96.

<sup>178</sup> Section 43-17-02 was also amended by section 1 of Senate Bill No. 2191, chapter 308, and section 18 of House Bill No. 1153, chapter 297.

3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

### **License required.**

After December 31, 2015, an individual may not perform or offer to perform medical imaging or radiation therapy procedures on humans for diagnostic or therapeutic purposes as defined in this chapter or otherwise indicate or imply that the individual is licensed to perform medical imaging or radiation therapy unless that individual is licensed under this chapter.

### **Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a

patient's immediate medical condition or to provide real-time visual guidance for another procedure.

6. A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
8. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

#### **North Dakota medical imaging and radiation therapy board of examiners.**

1. The governor shall appoint a state board of medical imaging and radiation therapy medical examiners consisting of nine members including:
  - a. Five medical imaging or radiation therapy professionals, one each from the areas of radiography, radiation therapy, nuclear medicine technology, sonography, and medical imaging or radiation therapy education;
  - b. One radiologist;
  - c. One medical physicist;
  - d. One physician from a rural area; and
  - e. One public member.
2. Each medical imaging or radiation therapy member of the board must:
  - a. Be a practicing medical imaging or radiation therapy licensee of integrity and ability.
  - b. Be a resident of and currently licensed in the member's medical imaging or radiation therapy modality in this state.
  - c. Be currently certified by a nationally recognized certification organization in the member's medical imaging or radiation therapy modality.
  - d. Have been engaged in the active practice of the medical imaging or radiation therapy profession within this state for a period of at least five years.
3. Each public member of the board must:
  - a. Be a resident of this state.
  - b. Be at least twenty-one years of age.
  - c. Not be affiliated with any group or profession that provides or regulates health care.
4. The radiologist, medical physicist, and physician members of the board must:

- a. Be a practicing radiologist, medical physicist, or physician of integrity and ability.
  - b. Be a resident of and be licensed to practice as a physician or registered as a medical physicist in this state.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

**Term of office.**

The term of office of each member of the board is four years and until a successor is appointed and qualified. The terms must be so arranged that no more than four terms expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment. In case of a vacancy before the expiration of a term, the appointment must be for the residue of the term. A member of the board may not serve on the board for more than two successive four-year terms.

**Removal of members of the board.**

The governor for good cause shown and upon the recommendation of three-fourths of the members of the board may remove any member of the board for misconduct, incapacity, or neglect of duty.

**Officers of the board.**

The board shall elect a president and vice president from its members and a secretary-treasurer. The secretary-treasurer need not be a member of the board. The secretary-treasurer must be the general administrative and prosecuting officer of the board.

**Meetings of the board.**

The board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving the administration of medical imaging or radiation therapy procedures. The board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of board members constitutes a quorum.

**Powers of the board.**

In addition to any other powers, the board may:

1. Administer this chapter.
2. Issue interpretations of this chapter.
3. Adopt rules as may be necessary to carry out this chapter.
4. Employ and fix the compensation of personnel the board determines necessary to carry into effect this chapter and incur other expenses necessary to effectuate this chapter.
5. Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this chapter.

6. Set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this chapter.
7. Conduct investigations for the purpose of determining whether violations of this chapter or grounds for disciplining licensees exist.
8. Develop standards and adopt rules for the improvement of the administration of medical imaging or radiation therapy procedures in this state.
9. Employ or contract with one or more certification organizations known to provide acceptable examinations leading to certification of technical personnel performing medical imaging or radiation therapy procedures.
10. Impose sanctions, deny licensure, levy fines, or seek appropriate civil or criminal penalties against anyone who violates or attempts to violate examination security, anyone who obtains or attempts to obtain licensure by fraud or deception, or anyone who knowingly assists in that type of activity.
11. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, licensing and disciplinary authorities of other jurisdictions, certification organizations, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation 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 the criminal history record check are the responsibility of the licensee or applicant.
12. Require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.
13. Establish a mechanism for dealing with a licensee who abuses or is dependent upon or addicted to alcohol or other addictive chemical substances, and enter an agreement with a professional organization possessing relevant procedures and techniques the board has evaluated and approved for the organization's cooperation or participation.
14. Issue a cease and desist order, obtain a court order, or an injunction to halt unlicensed practice, a violation of this chapter, or a violation of the rules of the board.
15. Issue a conditional, restricted, or otherwise circumscribed license as the board determines necessary.

### **Conflict of interest.**

A member of the board may not participate in the making of any decision or the taking of any action by the board or a board committee which affects the member's personal, professional, or pecuniary interest, or that of a known relative or business or professional associate.

**Records of the board.**

The board shall keep a record of its proceedings and applications for licensure. An application record must be preserved for at least six years beyond the disposition of the application or the last annual registration of the licensee, whichever is later.

**Biennial report.**

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

**Compensation - Expenses of board.**

A member of the board is entitled to receive for each day during which the member actually is engaged in the performance of the duties of the member's office per diem as determined by the board and mileage as provided in section 54-06-09. The secretary of the board is entitled to receive salary or other compensation and allowance for clerical and other expenses of the board as the board determines.

**License requirements.**

1. The board may issue a license to any applicant who has submitted satisfactory evidence, verified by oath or affirmation, that the applicant:
  - a. At the time of the application is at least eighteen years of age.
  - b. Has successfully completed a four-year course of study in a secondary school approved by the state board of higher education or passed an approved equivalency test.
2. In addition to the requirements of subsection 1, an individual seeking to obtain a license for a specific modality of medical imaging or radiation therapy shall comply with the following requirements:
  - a. Provide satisfactory completion of a course of study in radiography, radiation therapy, nuclear medicine technology, radiologist assistant, or sonography, or its equivalent to be determined by the board. The curriculum for each course of study may not be less stringent than the standards approved by the joint review committee on education in radiologic technology, joint review committee on nuclear medicine technology, commission on accreditation of allied health education programs, or any other appropriate accreditation agency approved by the board, provided the standards are not in conflict with board policy.
  - b. Pass a certification examination established or approved by the board given by a certification organization recognized by the board.
  - c. Show evidence of compliance with continuing education or recertification requirements required for registration of certification by a certification organization recognized by the board.
3. The board, upon application and payment of proper fees, may grant a license to an individual who has been licensed, certified, or registered to perform or administer medical imaging or radiation therapy procedures in another jurisdiction if that jurisdiction's standards of licensure are substantially equivalent to those provided in this chapter in accordance with rules adopted by the board.

**Scope of practice.**

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.
2. An individual holding a license under this chapter may perform medical imaging or radiation therapy procedures on humans for diagnostic or therapeutic purposes only by written, facsimile, electronic, or verbal prescription of an individual authorized by this state to prescribe medical imaging or radiation therapy procedures and under the supervision of a licensed practitioner.
3. An individual holding a license under this chapter may perform medical imaging and radiation therapy procedures on humans for diagnostic or therapeutic purposes only within the scope of that license as specified under the rules adopted by the board.

**Fees.**

1. The board shall set all fees by rules adopted under this chapter. All fees payable to the board must be deposited in the name of the board in financial institutions designated by the board as official depositories and must be used to pay all expenses incurred in carrying out the purposes of this chapter.
2. The board may issue a temporary license to an individual whose licensure or license renewal may be pending or if issuance is for the purpose of providing medical imaging or radiation therapy services to medically underserved areas as determined by the board. A temporary license may be issued only if the board finds it will not violate the purpose of this chapter or endanger the public health and safety. A temporary license expires when the determination is made either to issue or deny the applicant a regular license. A temporary license may not be issued for a period longer than one hundred eighty days.

**Renewal.**

1. A license issued under this chapter must be renewed before January second every two years. The license must be renewed upon the payment of a renewal fee if the licensee is not in violation of this chapter and has complied with any continuing education requirements adopted by rule of the board.
2. The board shall notify a licensee at least thirty days in advance of the expiration of the licensee's license. The licensee shall inform the board of any change of the licensee's address. Each licensee is responsible for renewing the licensee's license before the expiration date. A license that is not renewed automatically lapses.

3. The board may provide for the late renewal of an automatically lapsed license upon the payment of a reinstatement fee.

**Disciplinary action.**

The board may take disciplinary action against a licensee by any of the following means:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the performance of medical imaging or radiation therapy procedures.
5. Letter of censure.
6. Imposition of a penalty, not to exceed one thousand dollars for any single disciplinary action.

Any fines collected by the board must be deposited in the state general fund.

**Grounds for disciplinary action.**

Disciplinary action may be imposed against a licensee upon any of the following grounds:

1. 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.
2. The conviction of any misdemeanor determined by the board to have a direct bearing upon an individual's ability to serve the public as a licensee or of any felony. A license may not be withheld contrary to chapter 12.1-33.
3. Habitual use of alcohol or drugs.
4. Physical or mental disability materially affecting the ability to perform the duties of a medical imaging or radiation therapy professional in a competent manner.
5. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
6. Aiding or abetting the performance of medical imaging or radiation therapy by an unlicensed, incompetent, or impaired individual.
7. The violation of any provision of this chapter or any rule of the board, or any action, stipulation, limitation, condition, or agreement imposed by the board or its investigative panels.
8. The performance of medical imaging or radiation therapy under a false or assumed name.

9. The willful or negligent violation of the confidentiality between medical imaging or radiation therapy professional and patient, except as required by law.
10. Gross negligence in the performance of medical imaging or radiation therapy.
11. Sexual abuse, misconduct, or exploitation related to the licensee's performance of medical imaging or radiation therapy.
12. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of medical imaging or radiation therapy.
13. The failure to maintain in good standing, including completion of continuing education or recertification requirements, a certification from a nationally-recognized certification organization recognized by the board for the medical imaging or radiation therapy modality for which a license has been issued by the board.
14. The imposition by another state, jurisdiction, or certification organization recognized by the board of disciplinary action against a license, certification, or other authorization to perform medical imaging or radiation therapy based upon acts or conduct by the medical imaging or radiation therapy professional which would constitute grounds for disciplinary action under this section. A certified copy of the record of the action taken by the other state, jurisdiction, or certification organization is conclusive evidence of that action.
15. The failure to furnish the board or the investigative panel or investigators or representatives of the board or investigative panel information legally requested by the board or the investigative panel. The board shall keep a record of its proceedings in a disciplinary action or refusal to issue a license, together with the evidence offered.

#### **Costs of prosecution - Disciplinary proceedings.**

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a medical imaging or radiation therapy professional, the board may direct any medical imaging or radiation therapy professional to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels in the investigation and prosecution of the case. When applicable, the medical imaging or radiation therapy professional's license may be suspended until the costs are paid to the board. A medical imaging or radiation therapy professional may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the medical imaging or radiation therapy professional's license may be suspended for nonpayment.

#### **Practicing without a license - Violation of chapter - Penalty.**

An individual who performs medical imaging or radiation therapy in this state without complying with this chapter, and any individual who violates any provision of this chapter for which another penalty is not specified is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provision of this chapter without proof of actual damages sustained by any person.