

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 284

### HOUSE BILL NO. 1094

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

AN ACT to amend and reenact section 43-04-07 of the North Dakota Century Code, relating to per diem for board of barber examiners board members.

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

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

#### **43-04-07. Compensation - Expenses - How paid.**

Each member of the board is entitled to receive daily compensation for actual services in an amount not to exceed ~~sixty-two~~one hundred dollars and must be paid for actual expenses, as provided by law, incurred in attending meetings of the board and in performing official duties. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

Approved March 2, 2017

Filed March 3, 2017

## CHAPTER 285

### HOUSE BILL NO. 1092

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

AN ACT to amend and reenact sections 43-04-26, 43-04-31, 43-04-32, 43-04-33, 43-04-35, 43-04-36, 43-04-39, 43-04-42, and 43-04-45 of the North Dakota Century Code, relating to the repeal of apprentice barbering requirements; and to repeal sections 43-04-22, 43-04-23, 43-04-28, 43-04-29, and 43-04-34 of the North Dakota Century Code, relating to the repeal of apprentice barbering requirements.

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

**SECTION 1. AMENDMENT.** Section 43-04-26 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-26. Application for admission to barber school for postgraduate course.**

~~No~~A school or college of barbering may not enroll or admit any student in a postgraduate course thereof, unless ~~such~~the student ~~shall file~~files, in duplicate, an application, duly verified, which ~~must show that such~~the applicant:

1. Has graduated from a school or college of barbering approved by the board;
2. ~~Then holds a valid, unexpired, and uncanceled certificate of registration as a registered apprentice; or~~
3. Can prove by sworn affidavits that the applicant has practiced as a barber in another state of the United States for at least two years immediately prior to making ~~such~~the application.

One copy of ~~such~~the application must be retained by the college or school so admitting or enrolling ~~such~~the student and the other must be filed by such school or college with ~~said~~the board. ~~Nothing in this~~This section contained may not be construed as limiting or modifying the provisions of sections 43-04-31 and 43-04-35.

<sup>133</sup> **SECTION 2. AMENDMENT.** Section 43-04-31 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-31. Qualifications for certificate of registration as registered barber.**

A person is qualified to receive a certificate of registration to practice barbering if the person:

1. Is qualified in accordance with the provisions of section 43-04-23;
2. Is at least eighteen years of age;

<sup>133</sup> Additional corrections were made to S.L. 2017, ch. 285, § 2 because of the repeal of section 43-04-22 in S. L. 2017, ch. 285, § 10.

3. Is of good moral character and temperate habits;
4. ~~Has practiced as a registered apprentice for a period of twelve months under the immediate supervision of a registered barber; and~~
5. Has passed a satisfactory examination conducted by the board to determine that person's fitness to practice barbering.

**SECTION 3. AMENDMENT.** Section 43-04-32 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-32. Barber and apprentice - Application for examination.**

Any person who desires to take the examination for a certificate of registration to practice as a registered barber ~~or for a certificate of registration to practice as a registered apprentice~~, shall make application to the board on blanks prepared and furnished by ~~the board~~ and shall enclose with the application all of the following:

1. Proof, under oath, of the person's qualifications.
2. A five-inch by three-inch [12.7-centimeter by 7.62-centimeter] signed photograph of that person. The person also shall present such a photograph to the board when the person appears for examination.
3. The required fee.
4. A certificate showing graduation from a public or recognized private high school or an equivalent education as determined by an examination conducted by the board; provided, however, that two years armed service should be termed equivalent education.

**SECTION 4. AMENDMENT.** Section 43-04-33 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-33. Examinations - Barber -~~Apprentice barber.~~**

The board, not less than four times each year, at such times and places as it may determine, shall conduct examinations of applicants for certificates of registration to practice as registered barbers ~~and of applicants for certificates of registration to practice as registered apprentices~~. Each examination must include both a practical demonstration and a written and oral test, and must embrace the subjects usually taught in schools of barbering approved by the board.

**SECTION 5. AMENDMENT.** Section 43-04-35 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-35. Failure to pass examination for registered barber - When applicant may be re-examined.**

An applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the board ~~shall continue to practice as an apprentice for~~ must wait an additional ~~six~~ three months before that person again is entitled to take the examination for registration as a barber.

**SECTION 6. AMENDMENT.** Section 43-04-36 of the North Dakota Century Code is amended and reenacted as follows:

### **43-04-36. Barber and apprentice - Certificate of registration - When issued.**

The board shall issue to an applicant a certificate of registration as a registered barber whenever the applicant has complied with the provisions of section 43-04-31; and it shall issue a certificate of registration as a registered apprentice whenever the applicant has complied with the provisions of section 43-04-23.

**SECTION 7. AMENDMENT.** Section 43-04-39 of the North Dakota Century Code is amended and reenacted as follows:

### **43-04-39. Renewal and restoration of certificates of barber and apprentice barber.**

Every registered barber and every registered apprentice who continues in active practice or service, annually, on or before July first, shall renew that person's certificate of registration and pay the required fee. Every certificate of registration which has not been renewed during the month of July in any year expires the first day of August in that year. A registered barber or a registered apprentice whose certificate of registration has expired may have that person's certificate restored immediately upon payment of the required restoration fee. Any registered barber who retires from the practice of barbering for not more than five years may renew that person's certificate upon payment of the required restoration fee.

**SECTION 8. AMENDMENT.** Section 43-04-42 of the North Dakota Century Code is amended and reenacted as follows:

### **43-04-42. Fees.**

1. The board may charge applicants the following fees:
  - a. For examination and issuance of a certificate to practice master barbering, one hundred dollars.
  - ~~b. For examination and issuance of a certificate to practice as an apprentice barber, fifty dollars.~~
  - e. For renewal of a master barber's certificate, one hundred dollars.
  - ~~d.c.~~ For restoration of an expired master barber's certificate, a twenty dollar penalty fee in addition to the regular renewal fee.
  - ~~e.~~ For renewal of an apprentice barber's certificate, twenty dollars.
  - ~~f.~~ For restoration of an expired apprentice barber's certificate, a twenty dollar penalty fee in addition to the regular renewal fee.
  - ~~g.d.~~ For a permit to operate a barber school or college, an annual fee of one hundred twenty-five dollars.
  - ~~h.e.~~ For issuance of an annual barbershop license, fifty dollars, to be paid by each shop owner in advance.
  - ~~i.f.~~ For issuance of a certificate to an applicant who qualifies under section 43-04-38.1, one hundred seventy-five dollars.
  - ~~j.g.~~ For restoration of an expired barbershop license, a twenty dollar penalty fee in addition to the annual license fee.

- k-h. For renewal of an instructor's license, twenty-five dollars.
2. Each application to open or establish a barbershop in this state must be accompanied by a fee of one hundred dollars to cover expenses of inspection, which must be retained by the board and deposited as other fees.
  3. A duplicate license, certificate, or permit must be issued upon:
    - a. Filing a statement verified by the oath of the applicant which explains the loss;
    - b. Submitting a signed photograph of the applicant; and
    - c. Paying a fee of ten dollars for the issuance of the duplicate.
  4. Anyone who becomes a member of the armed forces of the United States in time of war, while holding a license as a barber or apprentice, and while in good standing as to payment of fees, may obtain a certificate restoration without payment of the restoration fee.

**SECTION 9. AMENDMENT.** Section 43-04-45 of the North Dakota Century Code is amended and reenacted as follows:

**43-04-45. Penalty.**

Any person who shall:

1. Violate any of the provisions of sections 43-04-21, 43-04-22, 43-04-30, and 43-04-43;
2. Permit any person in that person's employ, supervision, or control to practice as an ~~apprentice or~~ barber unless the person employed, supervised, or controlled has a certificate of registration as a registered ~~apprentice or~~ barber;
3. Obtain or attempt to obtain a certificate of registration by the payment of money other than the required fee, or any other thing of value, or by fraudulent misrepresentations;
4. Practice or attempt to practice by fraudulent misrepresentations; or
5. Willfully fail to display a certificate of registration as is required by this chapter,

is guilty of a class B misdemeanor. A violation of any provision of this chapter or of any rule, subpoena, or order of the board lawfully made pursuant hereto, except as otherwise provided herein, is a class B misdemeanor.

**SECTION 10. REPEAL.** Sections 43-04-22, 43-04-23, 43-04-28, 43-04-29, and 43-04-34 of the North Dakota Century Code are repealed.

Approved March 2, 2017

Filed March 3, 2017

## CHAPTER 286

### HOUSE BILL NO. 1087

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

AN ACT to create and enact section 43-06-16.1 of the North Dakota Century Code, relating to certified chiropractic clinical assistants; to amend and reenact subdivision hh of subsection 2 of section 12-60-24 and sections 43-06-01, 43-06-04.1, 43-06-07, 43-06-09.1, 43-06-11.1, 43-06-15, and 43-06-19 of the North Dakota Century Code, relating to chiropractic; and to provide a penalty.

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

<sup>134</sup> **SECTION 1. AMENDMENT.** Subdivision hh of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

hh. The state board of chiropractic examiners for applicants, licensees, certificants, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Section 43-06-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-06-01. Definitions.**

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

1. "Board" means the state board of chiropractic examiners.
2. "Certified chiropractic clinical assistant" means an individual certified by the board who in accordance with section 43-06-16.1 assists with basic health care duties in the practice of chiropractic under the supervision of a licensed doctor of chiropractic in good standing with the board.
3. a. "The practice of chiropractic" includes:
  - a- (1) 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;
  - b- (2) The treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature;

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<sup>134</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1060, chapter 94, section 1 of Senate Bill No. 2131, chapter 96, section 7 of Senate Bill No. 2327, chapter 199, section 1 of House Bill No. 1132, chapter 95, and section 1 of Senate Bill No. 2129, chapter 409.

- e- (3) The practice of physiotherapy, electrotherapy, or hydrotherapy;
  - d- (4) All other procedures taught by chiropractic colleges accredited by the council on chiropractic education or its successor; ~~and~~
  - e- (5) The rating and reporting of any permanent impairment of function and the providing of professional opinions regarding any matter included in this definition of practice of chiropractic as set out herein; and
    - (6) Delegation of basic health care duties in the practice of chiropractic to a certified chiropractic clinical assistant.
- b. The practice of chiropractic does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

**SECTION 3. AMENDMENT.** Section 43-06-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-04.1. Powers and duties of board.**

1. The board shall administer the provisions of this chapter and the administrative rules of the board relating to the practice of chiropractic. It has all powers, rights, and duties as provided in chapter 28-32.
2. The board shall verify the qualifications of applicants for licenses to practice chiropractic and of applicants for certification to practice as a certified chiropractic clinical assistant. It shall examine and renew the licenses or certification of duly qualified applicants.
3. The board shall regulate the practice of chiropractic and shall enforce the provisions of this chapter and the rules of the board. The board shall investigate complaints of violations and cause the prosecution of persons violating the provisions of this chapter or the administrative rules of the board.
4. The board may appoint a peer review committee and employ such personnel and incur such expenses as may be necessary for the performance of the board's duties and the enforcement of this chapter.
5. The board may inspect upon probable cause, at all reasonable times, any chiropractic office or place where chiropractic services are performed.
6. The board may adopt and amend administrative rules, consistent with the provisions of this chapter governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter, and proper performance of its duties, including:
  - a. A code of ethical conduct governing the practice of chiropractic.
  - b. Requirements, standards, and examinations to determine the intellectual, educational, scientific, technical, and professional qualifications of applicants for license or certification.
  - c. Matters pertaining to the content and conduct of examination.

- d. Matters pertaining to the operation and registration of chiropractic facilities.
- e. Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic.
- f. The quantity, type, and character of postgraduate study to be done by any licensee in order to comply with the provisions of this chapter.
- g. Set policies and procedures on what constitutes professional or unprofessional conduct.

**SECTION 4. AMENDMENT.** Section 43-06-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-07. Records of the board.**

1. The board shall keep a record of all its proceedings and a register of applications for licenses to practice chiropractic showing:
  1. a. The name and location of the institution from which each applicant received the applicant's degree of doctor of chiropractic.
  2. b. The date when the degree of doctor of chiropractic was granted.
  3. c. Whether the applicant was licensed or rejected.
2. The board shall maintain a register of certified chiropractic clinical assistants. The register is prima facie evidence of all matters recorded in the register.

**SECTION 5. AMENDMENT.** Section 43-06-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-09.1. Conviction not bar to licensure or certification - Exceptions.**

Conviction of an offense does not disqualify a person from licensure or certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a chiropractor or certified chiropractic clinical assistant, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 6. AMENDMENT.** Section 43-06-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-11.1. Criminal history record checks.**

The board may require any applicant or licensee, or certificate holder 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 criminal history record check are the responsibility of the applicant or licensee, or certificate holder.

**SECTION 7. AMENDMENT.** Section 43-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-15. Grounds for revocation or suspension of license or other action of the board - Sworn statement - Investigation - Hearing.**



1. The board may revoke, suspend, or take such other action as provided in this section regarding the license of any chiropractor in this state who:
  - a. Has a mental or physical condition such that the person is unable to safely engage in the practice of chiropractic.
  - b. Has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision.
  - c. Is suffering from alcoholism or drug addiction which endangers the public by impairing the chiropractor's ability to practice safely.
  - d. Procured the license to practice by fraud or mistake.
  - e. Has engaged in unprofessional or dishonorable conduct, including false or misleading advertising, rendering excessive or inappropriate treatment, or charging unconscionable fees.
  - f. Has been convicted of a crime involving moral turpitude, illegal possession or distribution of drugs, or any crime that would affect the person's ability to practice as a licensed chiropractor. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence.
  - g. Has aided, assisted, or enabled any unlicensed person to practice chiropractic contrary to this chapter or rule of the board.
  - h. Has engaged in the practice of abortion.
  - i. Has made use of any advertising statement of a character tending to deceive or mislead the public.
  - j. Has failed to maintain a chiropractic facility in safe and sanitary conditions.
  - k. Has incurred a suspension or revocation in another jurisdiction as a result of acts similar to acts described in this section or rule of the board. A certified copy of the suspension or revocation in the other jurisdiction is conclusive evidence.
  - l. Has committed any violation of the provisions of this chapter and the code of ethics or rules as adopted by the board, including the failure to submit for physical or mental examination or to provide information as required by the board.
  - m. Has practiced chiropractic while the license to practice was suspended or revoked.
  - n. Has, while under probation, violated its terms.
  - o. Has failed to properly supervise a certified chiropractic clinical assistant or who has delegated duties to a certified chiropractic clinical assistant which are beyond the assistant's education or training or which are beyond the scope of practice of a certified chiropractic clinical assistant.

2. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a sworn statement and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations under this chapter. The reports are not public records.
3. Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of this chapter on behalf of the board, including members of any peer review committee, are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.
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 records 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 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.
6. When the statement and other reports and information have been filed, the board shall notify the licensed chiropractor of the allegations and shall thereafter make an investigation for the purpose of determining whether the allegations in the statement constitute a basis for further proceedings. The investigation must be conducted in such manner and at such time and place as in the judgment of the board will best ascertain the facts. The board may appoint a peer review committee. The board, in order to pursue the investigation, has the power to subpoena and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed chiropractor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and review any relevant medical or psychological records, including test results and x-rays relative to the examination or treatment of the licensed chiropractor. A written request from the board constitutes authorization to release information. The medical or psychological information is not public record.
7. If, based on the investigation or report from a peer review committee, the board has reasonable cause to believe that there is a basis for further proceedings, the board shall prepare a complaint and serve it, along with a notice of hearing, on the licensed chiropractor and thereafter proceed with a hearing on the matter under chapter 28-32. All hearings must be held in Bismarck at the state capitol unless the board and the licensed chiropractor agree otherwise.

8. After the hearing, the board, under section 28-32-39, shall make and give notice of its determination or decision as to whether the offenses charged have been committed or the conditions charged do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:
  - a. Revoke the license;
  - b. Suspend the licensee's right to practice for a period not to exceed one year;
  - c. Suspend its judgment of revocation on terms and conditions determined by the board;
  - d. Place the licensee on probation; or
  - e. Take any other disciplinary action which the board in its discretion considers proper, including the ordering of an adjustment to a patient's bill or refund of such amount previously paid, including reasonable interest from the date of the order, to a patient or payer of any unconscionable fees for chiropractic services.
  - f. In addition to the actions imposed in subdivisions a through e, the board may:
    - (1) Require payment of all costs of proceedings resulting in a disciplinary action.
    - (2) Impose a civil penalty not exceeding ten thousand dollars for each separate violation, to deprive the chiropractor of any economic advantage gained by reason of the violation found and to reimburse the board for the cost of the investigation and proceedings.
9. In cases of revocation, suspension, or probation, the board shall record the facts of the case and all actions of the board.
10. On the expiration of a term of suspension, the licensee must be reinstated by the board if the chiropractor applies to the board and furnishes evidence, satisfactory to the board, that the licensee is then of good character and conduct or restored to good health and that the licensee has not practiced chiropractic during the term of suspension and is competent to practice in this state. If the evidence fails to establish those facts to the satisfaction of the board, the board may require the applicant to submit to an examination in accordance with sections 43-06-08 through 43-06-12 or shall proceed to hearing on revocation with notice as provided in subsection 7.
11. Any licensed chiropractor may take corrective action or voluntarily relinquish the chiropractor's license to the board before a formal order of the board on such terms and conditions as may be agreed by the licensed chiropractor and the board.

**SECTION 8.** Section 43-06-16.1 of the North Dakota Century Code is created and enacted as follows:

**43-06-16.1. Certified chiropractic clinical assistant.**

1. A person may not practice as a certified chiropractic clinical assistant or claim to be a chiropractic assistant without certification from the board. The fee for initial certification is fifty dollars. The board may grant a temporary certification to an initial applicant who is waiting for a criminal history background check to be completed. This temporary certification expires automatically upon the applicant receiving a regular certification or being notified the application has been denied.
2. To be certified to practice as a certified chiropractic clinical assistant, an applicant must provide evidence satisfactory to the board the applicant:
  - a. Graduated from high school, or holds a graduate equivalency degree.
  - b. Is at least eighteen years of age.
  - c. Successfully completed the certified chiropractic clinical assistant program and examination by the federation of chiropractic licensing boards. However, applicants for initial certification before March 1, 2018, and who have verified employment of two thousand hours as a chiropractic assistant within the three years before August 1, 2017, and submitted evidence of passing the certified chiropractic clinical assistant examination by the national board of chiropractic examiners via the federation of chiropractic licensing boards, qualify for certification without meeting the coursework requirement of the program.
  - d. Is of good moral character and submits documentation of good moral character as prescribed by the board, including criminal records review.
  - e. Completed an application in a manner and form provided by the board.
  - f. Paid all applicable fees relative to the application process as determined by the board.
  - g. Received practical experience to the extent required to demonstrate competency to safely provide patient care pertinent to the chiropractic office at which the certified chiropractic clinical assistant is employed.
3. A certified chiropractic clinical assistant who is certified in another jurisdiction may apply for certification. The applicant shall provide evidence satisfactory to the board the applicant:
  - a. Has current practice privilege in good standing as a certified chiropractic clinical assistant or equivalent granted by at least one jurisdiction with requirements similar to or greater than the requirement of this board; and
  - b. Presented to the board current documentation that any practice privilege granted by another jurisdiction as a certified chiropractic clinical assistant or equivalent has not been suspended, revoked, or otherwise restricted for any reason except nonrenewal.

4. A minimum examination score of seventy-five percent is required to obtain certification. The examination must be provided by the national board of chiropractic examiners via the federation of chiropractic licensing boards or a board-approved examination.
5. The fee for renewal of the certification is fifty dollars per year. Certificate renewal is March first of every year.
  - a. A certified chiropractic clinical assistant shall obtain six hours of continuing education every two years to renew certification. These hours must be a program approved by providers of approved continuing education, a seminar sponsored by the North Dakota chiropractic association and approved by the board, or a seminar approved for continuing education by another state's board of chiropractic examiners or equivalent. Proof of meeting continuing education requirements must be submitted with the certified chiropractic clinical assistant's renewal application on the even-numbered years after initially receiving certification.
  - b. For an applicant who first receives initial certification between January first and March first, the certification is deemed to be automatically renewed on March first for an additional year without payment of an additional renewal fee.
6. A certified chiropractic clinical assistant must be under the direct supervision of a North Dakota licensed chiropractor in good standing with the board. Direct supervision means the oversight provided by the chiropractor over the clinical services performed by a certified chiropractic clinical assistant, and requires the chiropractor to be on the premises at all times and readily available to instruct the certified chiropractic clinical assistant throughout the performance of the clinical services.
7. The certified chiropractic clinical assistant may assist the chiropractor in patient care involving physiotherapy, electrotherapy, hydrotherapy, chiropractic rehabilitative therapy, administrative processes, and other activities as needed to assist in the practice of chiropractic. The certified chiropractic clinical assistant may perform delegated duties commensurate with the certified chiropractic clinical assistant's education and training, but may not evaluate, interpret, design, or modify established treatment programs of chiropractic care or violate any statute. Certified chiropractic clinical assistants may not participate in clinical decisionmaking, render manipulative chiropractic care, create or change the course of a chiropractic treatment plan, or represent themselves as independent health care providers. A certified chiropractic clinical assistant may not perform medical imaging unless also licensed under chapter 43-62 or upon meeting an exception from that chapter.
8. The board may deny certification of an applicant, or may revoke, suspend, or take other appropriate disciplinary or corrective action regarding the certification of any certified chiropractic clinical assistant who:
  - a. Has a mental or physical condition that renders the individual unable to safely engage in patient care.
  - b. Has been declared incompetent by a court.

- c. Is suffering from alcoholism or drug addiction that endangers the public by impairing the certified chiropractic clinical assistant's ability to practice safely.
- d. Procured the certification to practice by fraud or mistake.
- e. Has engaged in unprofessional or dishonorable conduct.
- f. Has been convicted of a crime involving moral turpitude which would affect the certified chiropractic clinical assistant's ability to safely engage in patient care.
- g. Has aided or assisted a noncertified individual to practice as a certified chiropractic clinical assistant.
- h. Has made advertising statements that are deceiving or misleading to the public.
- i. Has had disciplinary action taken in another jurisdiction.
- j. Has committed any violation of regulations regarding chiropractic found in this chapter or rules adopted by the board.
- k. Has practiced as a certified chiropractic clinical assistant while the certification was suspended or revoked.
- l. Is found guilty of unprofessional conduct that includes:
  - (1) Willfully harassing, abusing, or intimidating a patient either physically or verbally.
  - (2) Any conduct that has endangered or is likely to endanger the health or safety of the public.
  - (3) Conviction of a crime related to the qualification of a certified chiropractic clinical assistant.
  - (4) Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
  - (5) Conviction of violating any law or regulation concerning the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
  - (6) Knowingly making or signing any false certificates related to the chiropractic care administered.
  - (7) Participation in any act of fraud.
  - (8) Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
  - (9) Delegating professional responsibilities to a person that is not certified to provide the services.

- (10) Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient even if the patient attempts to sexualize the relationship, except when the patient is the certified chiropractic clinical assistant's spouse.
9. Disciplinary procedures will be conducted in accordance with chapter 28-32, with the following provisions:
- a. Complaints must be filed and signed in written form or may be considered by the board on its own motion.
  - b. The board shall notify the certified chiropractic clinical assistant and the employer regarding any complaints filed. Full and timely cooperation is required in the investigation.
  - c. The board may appoint a peer review committee at its discretion. The peer review committee has the same authority as a peer review committee appointed under section 43-06-14.1.
  - d. If the board finds probable cause to impose disciplinary action, the board shall prepare a complaint and serve it to the certified chiropractic clinical assistant and employer.
10. Certification is not required for individuals who solely perform administrative activities of a nonclinical nature.

**SECTION 9. AMENDMENT.** Section 43-06-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-06-19. Penalty.**

1. AnyIt is a class B misdemeanor for any person who fraudulently procures a license to practice chiropractic or who, without complying with the provisions of this chapter:
  - 1- a. Practices or attempts to practice chiropractic;
  - 2- b. Advertises as a chiropractor; or
  - 3- c. Uses the terms or letters, doctor of chiropractic, chiropractor, D.C., chiropractic physician, or any other title that will induce the belief that the person is engaged in the practice of chiropracticis guilty of a class B misdemeanor.
2. It is an infraction for any person that fraudulently procures a certification to practice as a certified chiropractic clinical assistant or that, without complying with the provisions of this chapter:
  - a. Practices or attempts to practice as a certified chiropractic clinical assistant;
  - b. Advertises as a certified chiropractic clinical assistant; or
  - c. Uses the terms or letters certified chiropractic clinical assistant, certified chiropractic clinical assistant, or any other title that will induce the belief

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the person is engaged in the practice of chiropractic as a certified chiropractic assistant.

Approved March 2, 2017

Filed March 3, 2017



## CHAPTER 287

### HOUSE BILL NO. 1097

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

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the nurse licensure compact; and to amend and reenact section 43-12.1-09.1 of the North Dakota Century Code, relating to criminal history record checks.

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

<sup>135</sup> **SECTION 1. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall require each applicant for initial licensure and registration, including applicants for a multistate license under section 2 of this Act, to submit to a statewide and nationwide criminal history record check. The board may require any licensee or registrant who is renewing a license or registration, including renewal of a multistate license under section 2 of this Act, and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09. The board may not share with, or disclose to, the interstate commission of nurse licensure compact administrators any contents of a nationwide criminal history record check.

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

#### **ARTICLE I - FINDINGS AND DECLARATION OF PURPOSE**

1. The party states find that:
  - a. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
  - b. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

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<sup>135</sup> Section 43-12.1-09.1 was also amended by section 1 of House Bill No. 1096, chapter 288.

- c. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
  - d. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;
  - e. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and
  - f. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.
2. The general purposes of this compact are to:
- a. Facilitate the states' responsibility to protect the public's health and safety;
  - b. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
  - c. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;
  - d. Promote compliance with the laws governing the practice of nursing in each jurisdiction;
  - e. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
  - f. Decrease redundancies in the consideration and issuance of nurse licenses; and
  - g. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

## **ARTICLE II - DEFINITIONS**

### As used in this compact:

1. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.
2. "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.
3. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and

enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.

4. "Current significant investigative information" means:
  - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
  - b. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
5. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
6. "Home state" means the party state that is the nurse's primary state of residence.
7. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.
8. "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.
9. "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or licensed practical/vocational nurse in a remote state.
10. "Nurse" means registered nurse or licensed practical/vocational nurse, as those terms are defined by each party state's practice laws.
11. "Party state" means any state that has adopted this compact.
12. "Remote state" means a party state, other than the home state.
13. "Single-state license" means a nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.
14. "State" means a state, territory, or possession of the United States and the District of Columbia.
15. "State practice laws" means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

**ARTICLE III - GENERAL PROVISIONS AND JURISDICTION**

1. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse or as a licensed practical/vocational nurse, under a multistate licensure privilege, in each party state.
2. A state shall implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.
3. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:
  - a. Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;
  - b. (1) Has graduated or is eligible to graduate from a licensing board-approved registered nurse or licensed practical/vocational nurse prelicensure education program; or  
(2) Has graduated from a foreign registered nurse or licensed practical/vocational nurse prelicensure education program that:
    - (a) Has been approved by the authorized accrediting body in the applicable country; and
    - (b) Has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;
  - c. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;
  - d. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;
  - e. Is eligible for or holds an active, unencumbered license;
  - f. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;
  - g. Has not been convicted or found guilty, or has entered an agreed disposition, of a felony offense under applicable state or federal criminal law;

- h. Has not been convicted or found guilty, or has entered an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;
  - i. Is not currently enrolled in an alternative program;
  - j. Is subject to self-disclosure requirements regarding current participation in an alternative program; and
  - k. Has a valid United States social security number.
- 4. All party states may, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it promptly shall notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the home state of any such actions by remote states.
- 5. A nurse practicing in a party state shall comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but includes all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.
- 6. Individuals not residing in a party state continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. This compact does not affect the requirements established by a party state for the issuance of a single-state license.
- 7. Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:
  - a. A nurse, who changes primary state of residence after this compact's effective date, shall meet all applicable requirements of subsection 3 of article III to obtain a multistate license from a new home state.
  - b. A nurse who fails to satisfy the multistate licensure requirements in subsection 3 of article III due to a disqualifying event occurring after this compact's effective date is ineligible to retain or renew a multistate license, and the nurse's multistate license must be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("commission").

#### **ARTICLE IV - APPLICATIONS FOR LICENSURE IN A PARTY STATE**

- 1. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information

system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

2. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.
3. If a nurse changes primary state of residence by moving between two party states, the nurse shall apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.
  - a. The nurse may apply for licensure in advance of a change in primary state of residence.
  - b. A multistate license may not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.
4. If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

#### **ARTICLE V - ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS**

1. In addition to the other powers conferred by state law, a licensing board may:
  - a. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.
    - (1) Only the home state has the power to take adverse action against a nurse's license issued by the home state.
    - (2) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.
  - b. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.
  - c. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board also may take any appropriate action and promptly shall report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any such actions.

- d. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.
  - e. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks, and use the results in making licensure decisions.
  - f. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.
  - g. Take adverse action based on the factual findings of the remote state, if the licensing board follows its own procedures for taking such adverse action.
2. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states must be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
  3. This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

#### **ARTICLE VI - COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE OF INFORMATION**

1. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical/vocational nurses. This system includes information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.
2. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

3. All licensing boards promptly shall report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.
4. Current significant investigative information and participation in nonpublic or confidential alternative programs must be transmitted through the coordinated licensure information system only to party state licensing boards.
5. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.
6. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
7. Any information contributed to the coordinated licensure information system which is subsequently required to be expunged by the laws of the party state contributing that information also must be expunged from the coordinated licensure information system.
8. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which must include, at a minimum:
  - a. Identifying information;
  - b. Licensure data;
  - c. Information related to alternative program participation; and
  - d. Other information that may facilitate the administration of this compact, as determined by commission rules.
9. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

#### **ARTICLE VII - ESTABLISHMENT OF THE INTERSTATE COMMISSION OF NURSE LICENSURE COMPACT ADMINISTRATORS**

1. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.
  - a. The commission is an instrumentality of the party states.
  - b. Venue is proper, and judicial proceedings by or against the commission must be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission



may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

c. This compact may not be construed to be a waiver of sovereign immunity.

2. Membership, voting, and meetings.

a. Each party state must have and be limited to one administrator. The head of the state licensing board or designee is the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the party state in which the vacancy exists.

b. Each administrator is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise has an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

c. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws or rules of the commission.

d. All meetings are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Article VIII.

e. The commission may convene in a closed, nonpublic meeting if the commission discusses:

(1) Noncompliance of a party state with its obligations under this compact;

(2) The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(3) Current, threatened, or reasonably anticipated litigation;

(4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;

(5) Accusing any person of a crime or formally censuring any person;

(6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(8) Disclosure of investigatory records compiled for law enforcement purposes;

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- (9) Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this compact; or
- (10) Matters specifically exempted from disclosure by federal or state statute.
- f. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions taken, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
3. By a majority vote of the administrators, the commission shall prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:
- a. Establishing the fiscal year of the commission;
- b. Providing reasonable standards and procedures:
- (1) For the establishment and meetings of other committees; and
- (2) Governing any general or specific delegation of any authority or function of the commission;
- c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;
- d. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
- e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws exclusively must govern the personnel policies and programs of the commission; and
- f. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the

termination of this compact after the payment or reserving of all of its debts and obligations:

4. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.
5. The commission shall maintain its financial records in accordance with the bylaws.
6. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
7. The commission may:
  - a. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all party states;
  - b. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law may not be affected;
  - c. Purchase and maintain insurance and bonds;
  - d. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;
  - e. Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources;
  - f. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
  - g. Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same if at all times the commission avoids any appearance of impropriety or conflict of interest;
  - h. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal, or mixed if at all times the commission avoids any appearance of impropriety;
  - i. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
  - j. Establish a budget and make expenditures;
  - k. Borrow money;

- l. Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;
  - m. Provide and receive information from, and to cooperate with, law enforcement agencies;
  - n. Adopt and use an official seal; and
  - o. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.
8. Financing of the commission.
  - a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
  - b. The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.
  - c. The commission may not incur obligations of any kind before securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
  - d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
9. Qualified immunity, defense, and indemnification.
  - a. The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against which the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities. However, this subdivision may not be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.
  - b. The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission

that occurred within the scope of commission employment, duties, or responsibilities, or that the person against which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subdivision may not be construed to prohibit that person from retaining that person's own counsel and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

- c. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

### **ARTICLE VIII - RULEMAKING**

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.
2. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
3. Before the promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
  - a. On the website of the commission; and
  - b. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.
4. The notice of proposed rulemaking must include:
  - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
  - b. The text of the proposed rule or amendment, and the reason for the proposed rule;
  - c. A request for comments on the proposed rule from any interested person; and
  - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

5. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
6. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
7. The commission shall publish the place, time, and date of the scheduled public hearing.
  - a. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy must be made available upon request.
  - b. This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
8. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. By majority vote of all administrators, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. However, the usual rulemaking procedures provided in this compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
  - a. Meet an imminent threat to public health, safety, or welfare;
  - b. Prevent a loss of commission or party state funds; or
  - c. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.
12. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing, and delivered to the commission before the end of the notice period. If a challenge is not made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

**ARTICLE IX - OVERSIGHT, DISPUTE, RESOLUTION AND ENFORCEMENT****1. Oversight.**

- a. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.**
- b. The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.**

**2. Default, technical assistance, and termination.**

- a. If the commission determines a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:**
  - (1) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and**
  - (2) Provide remedial training and specific technical assistance regarding the default.**
- b. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.**
- c. Termination of membership in this compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.**
- d. A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.**
- e. The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.**
- f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.**

### 3. Dispute resolution.

- a. Upon request by a party state, the commission shall attempt to resolve disputes related to the compact which arise among party states and between party and nonparty states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.
- c. If the commission cannot resolve disputes among party states arising under this compact:
  - (1) The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.
  - (2) The decision of a majority of the arbitrators is final and binding.

### 4. Enforcement.

- a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
- b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.
- c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

## **ARTICLE X - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT**

1. This compact becomes effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. All party states to this compact, that also were parties to the prior nurse licensure compact, superseded by this compact, ("prior compact"), are deemed to have withdrawn from said prior compact within six months after the effective date of this compact.
2. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.
3. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal does not take effect until six months after enactment of the repealing statute.



4. A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.
5. This compact may not be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.
6. This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.
7. Representatives of nonparty states to this compact must be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

#### **ARTICLE XI - CONSTRUCTION AND SEVERABILITY**

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

The term "head of the state licensing board" as used to define the compact administrator in subdivision a of subsection 2 of article VII means the executive director of the state board of nursing.

Approved April 4, 2017

Filed April 4, 2017

## CHAPTER 288

### HOUSE BILL NO. 1096

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

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the advanced practice registered nurse licensure compact; and to amend and reenact section 43-12.1-09.1 of the North Dakota Century Code, relating to criminal history record checks.

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

<sup>136</sup> **SECTION 1. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall require each applicant for initial licensure and registration, including applicants for a multistate license under section 2 of this Act, to submit to a statewide and nationwide criminal history record check. The board may require any licensee or registrant who is renewing a license or registration, including renewal of a multistate license under section 2 of this Act, and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09. The board may not share with, or disclose to, the interstate commission of nurse licensure compact administrators any contents of a nationwide criminal history record check.

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

#### **ARTICLE I - FINDINGS AND DECLARATION OF PURPOSE**

1. The party states find that:
  - a. The health and safety of the public are affected by the degree of compliance with advanced practice registered nurse licensure requirements and the effectiveness of enforcement activities related to state advanced practice registered nurse licensure laws;
  - b. Violations of advanced practice registered nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

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<sup>136</sup> Section 43-12.1-09.1 was also amended by section 1 of House Bill No. 1097, chapter 287.

- c. The expanded mobility of advanced practice registered nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of advanced practice registered nurse licensure and regulation;
  - d. New practice modalities and technology make compliance with individual state advanced practice registered nurse licensure laws difficult and complex;
  - e. The current system of duplicative advanced practice registered nurse licensure for advanced practice registered nurses practicing in multiple states is cumbersome and redundant for both advanced practice registered nurses and states; and
  - f. Uniformity of advanced practice registered nurse licensure requirements throughout the states promotes public safety and public health benefits.
2. The general purposes of this compact are to:
- a. Facilitate the states' responsibility to protect the public's health and safety;
  - b. Ensure and encourage the cooperation of party states in the areas of advanced practice registered nurse licensure and regulation, including promotion of uniform licensure requirements;
  - c. Facilitate the exchange of information between party states in the areas of advanced practice registered nurse regulation, investigation, and adverse actions;
  - d. Promote compliance with the laws governing advanced practice registered nurse practice in each jurisdiction;
  - e. Invest all party states with the authority to hold an advanced practice registered nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
  - f. Decrease redundancies in the consideration and issuance of advanced practice registered nurse licenses; and
  - g. Provide opportunities for interstate practice by advanced practice registered nurses who meet uniform licensure requirements.

## **ARTICLE II - DEFINITIONS**

As used in this compact:

1. "Advanced practice registered nurse" means a registered nurse who has gained additional specialized knowledge, skills, and experience through a program of study recognized or defined by the Interstate Commission of Advanced Practice Registered Nurse Compact Administrators ("commission"), and who is licensed to perform advanced nursing practice. An advanced practice registered nurse is licensed in an advanced practice registered nurse role that is congruent with an advanced practice registered nurse educational program, certification, and commission rules.

2. "Advanced practice registered nurse licensure" means the regulatory mechanism used by a party state to grant legal authority to practice as an advanced practice registered nurse.
3. "Advanced practice registered nurse uniform licensure requirements" means minimum uniform licensure, education, and examination requirements as adopted by the commission.
4. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an advanced practice registered nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting an advanced practice registered nurse's authorization to practice, including the issuance of a cease and desist action.
5. "Alternative program" means a non-disciplinary monitoring program approved by a licensing board.
6. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on advanced practice registered nurse licensure and enforcement activities related to advanced practice registered nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.
7. "Current significant investigatory information" means:
  - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the advanced practice registered nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
  - b. Investigative information that indicates that the advanced practice registered nurse represents an immediate threat to public health and safety regardless of whether the advanced practice registered nurse has been notified and had an opportunity to respond.
8. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
9. "Home state" means the party state that is the advanced practice registered nurse's primary state of residence.
10. "Licensing board" means a party state's regulatory body responsible for regulating the practice of advanced practice registered nursing.
11. "Multistate license" means an advanced practice registered nurse license to practice as an advanced practice registered nurse issued by a home state licensing board which authorizes the advanced practice registered nurse to practice as an advanced practice registered nurse in all party states under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state.

12. "Multistate licensure privilege" means a legal authorization associated with an advanced practice registered nurse multistate license which permits an advanced practice registered nurse to practice as an advanced practice registered nurse in a remote state, in the same role and population focus as the advanced practice registered nurse is licensed in the home state.
13. "Noncontrolled prescription drug" means a device or drug that is not a controlled substance and is prohibited under state or federal law from being dispensed without a prescription. The term includes a device or drug that bears or is required to bear the legend "caution: federal law prohibits dispensing without prescription" or "prescription only" or other legend that complies with federal law.
14. "Party state" means any state that has adopted this compact.
15. "Population focus" means a specific patient population that is congruent with the advanced practice registered nurse educational program, certification, and commission rules.
16. "Prescriptive authority" means the legal authority to prescribe medications and devices as defined by party state laws.
17. "Remote state" means a party state that is not the home state.
18. "Single-state license" means an advanced practice registered nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.
19. "State" means a state, territory, or possession of the United States and the District of Columbia.
20. "State practice laws" means a party state's laws, rules, and regulations that govern advanced practice registered nurse practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. State practice laws do not include the requirements necessary to obtain and retain an advanced practice registered nurse license, except for qualifications or requirements of the home state.

### **ARTICLE III - GENERAL PROVISIONS AND JURISDICTION**

1. A state must implement procedures for considering the criminal history records of applicants for initial advanced practice registered nurse licensure or advanced practice registered nurse licensure by endorsement. Such procedures must include the submission of fingerprints or other biometric-based information by advanced practice registered nurse applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.
2. By rule, the commission shall adopt the advanced practice registered nurse uniform licensure requirements. The uniform licensure requirements must provide the minimum requirements for advanced practice registered nurse multistate licensure in party states, if the commission may adopt rules

whereby an advanced practice registered nurse, with an unencumbered license on the effective date of this compact, may obtain, by endorsement or otherwise, and retain a multistate license in a party state.

3. In order to obtain or retain a multistate license, an advanced practice registered nurse shall meet, in addition to the uniform licensure requirements, the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable home state laws.
4. By rule, the commission shall identify the approved advanced practice registered nurse roles and population foci for licensure as an advanced practice registered nurse. An advanced practice registered nurse issued a multistate license must be licensed in an approved advanced practice registered nurse role and at least one approved population focus.
5. An advanced practice registered nurse multistate license issued by a home state to a resident in that state will be recognized by each party state as authorizing the advanced practice registered nurse to practice as an advanced practice registered nurse in each party state, under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state. If an applicant does not qualify for a multistate license, a single-state license may be issued by a home state.
6. Issuance of an advanced practice registered nurse multistate license must include prescriptive authority for noncontrolled prescription drugs, unless the advanced practice registered nurse was licensed by the home state before the home state's adoption of this compact and has not previously held prescriptive authority.
  - a. An advanced practice registered nurse granted prescriptive authority for noncontrolled prescription drugs in the home state may exercise prescriptive authority for noncontrolled prescription drugs in any remote state while exercising a multistate licensure privilege under an advanced practice registered nurse multistate license; the advanced practice registered nurse may not be required to meet any additional eligibility requirements imposed by the remote state in exercising prescriptive authority for noncontrolled prescription drugs.
  - b. Prescriptive authority in the home state for an advanced practice registered nurse who was not granted prescriptive authority at the time of initial licensure by the home state, before the adoption of this compact, must be determined under home state law.
  - c. Prescriptive authority eligibility for an advanced practice registered nurse holding a single-state license must be determined under the law of the licensing state.
7. For each state in which an advanced practice registered nurse seeks authority to prescribe controlled substances, the advanced practice registered nurse shall satisfy all requirements imposed by such state in granting and/or renewing such authority.
8. An advanced practice registered nurse issued a multistate license may assume responsibility and accountability for patient care independent of a supervisory or collaborative relationship with a physician. This authority may

be exercised in the home state and in any remote state in which the advanced practice registered nurse exercises a multistate licensure privilege. For an advanced practice registered nurse issued a single-state license in a party state, the requirement for a supervisory or collaborative relationship with a physician must be determined under applicable party state law.

9. All party states are authorized, in accordance with state due process laws, to take adverse action against an advanced practice registered nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects an advanced practice registered nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it promptly shall notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the home state of any such actions by remote states.
10. An advanced practice registered nurse practicing in a party state shall comply with the state practice laws of the state in which the client is located at the time service is provided. Advanced practice registered nurse practice is not limited to patient care, but includes all advanced nursing practice as defined by the state practice laws of the party state in which the client is located. Advanced practice registered nurse practice in a party state under a multistate licensure privilege subjects the advanced practice registered nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.
11. This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state must be recognized by other party states as satisfying any state law requirement for registered nurse licensure as a precondition for authorization to practice as an advanced practice registered nurse in that state.
12. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state advanced practice registered nurse license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice as an advanced practice registered nurse in any other party state.

#### **ARTICLE IV - APPLICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE LICENSURE IN A PARTY STATE**

1. Upon application for an advanced practice registered nurse multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held or is the holder of a licensed practical/vocational nursing license, a registered nursing license, or an advanced practice registered nurse license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

2. An advanced practice registered nurse may hold a multistate advanced practice registered nurse license, issued by the home state, in only one party state at a time.
3. If an advanced practice registered nurse changes primary state of residence by moving between two party states, the advanced practice registered nurse shall apply for advanced practice registered nurse licensure in the new home state, and the multistate license issued by the prior home state must be deactivated in accordance with applicable commission rules.
  - a. The advanced practice registered nurse may apply for licensure in advance of a change in primary state of residence.
  - b. A multistate advanced practice registered nurse license may not be issued by the new home state until the advanced practice registered nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate advanced practice registered nurse license from the new home state.
4. If an advanced practice registered nurse changes primary state of residence by moving from a party state to a nonparty state, the advanced practice registered nurse multistate license issued by the prior home state converts to a single-state license, valid only in the former home state.

#### **ARTICLE V - ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS**

1. In addition to the other powers conferred by state law, a licensing board may:
  - a. Take adverse action against an advanced practice registered nurse's multistate licensure privilege to practice within that party state.
    - (1) Only the home state may take adverse action against an advanced practice registered nurse's license issued by the home state.
    - (2) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct that occurred outside of the home state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.
  - b. Issue cease and desist orders or impose an encumbrance on an advanced practice registered nurse's authority to practice within that party state.
  - c. Complete any pending investigations of an advanced practice registered nurse who changes primary state of residence during the course of such investigations. The licensing board also may take any appropriate action and promptly shall report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any such actions.



- d. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a party state licensing board for the attendance and testimony of witnesses and/or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing licensing board shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses and/or evidence are located.
  - e. Obtain and submit, for an advanced practice registered nurse licensure applicant, fingerprints or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions.
  - f. If otherwise permitted by state law, recover from the affected advanced practice registered nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that advanced practice registered nurse.
  - g. Take adverse action based on the factual findings of another party state, if the licensing board follows its own procedures for taking such adverse action.
2. If adverse action is taken by a home state against an advanced practice registered nurse's multistate licensure, the privilege to practice in all other party states under a multistate licensure privilege must be deactivated until all encumbrances have been removed from the advanced practice registered nurse's multistate license. All home state disciplinary orders that impose adverse action against an advanced practice registered nurse's multistate license must include a statement that the advanced practice registered nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
  3. This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any advanced practice registered nurse for the duration of the advanced practice registered nurse's participation in an alternative program.

## **ARTICLE VI - COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE INFORMATION**

1. All party states shall participate in a coordinated licensure information system of all advanced practice registered nurses, licensed registered nurses, and licensed practical/vocational nurses. This system includes information on the licensure and disciplinary history of each advanced practice registered nurse, as submitted by party states, to assist in the coordinated administration of advanced practice registered nurse licensure and enforcement efforts.

2. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.
3. All licensing boards promptly shall report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and advanced practice registered nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic and/or confidential under state law.
4. Current significant investigative information and participation in nonpublic or confidential alternative programs must be transmitted through the coordinated licensure information system only to party state licensing boards.
5. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.
6. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
7. Any information contributed to the coordinated licensure information system which is subsequently required to be expunged by the laws of the party state contributing the information must be removed from the coordinated licensure information system.
8. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which must include, at a minimum:
  - a. Identifying information;
  - b. Licensure data;
  - c. Information related to alternative program participation information; and
  - d. Other information that may facilitate the administration of this compact, as determined by commission rules.
9. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

**ARTICLE VII - ESTABLISHMENT OF THE INTERSTATE COMMISSION OF  
ADVANCED PRACTICE REGISTERED NURSE COMPACT ADMINISTRATORS**

1. The party states hereby create and establish a joint public agency known as the interstate commission of advanced practice registered nurse compact administrators.

- a. The commission is an instrumentality of the party states.
  - b. Venue is proper, and judicial proceedings by or against the commission must be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
  - c. This compact may not be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
- a. Each party state must have and be limited to one administrator. The head of the state licensing board or designee is the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission must be filled in accordance with the laws of the party state in which the vacancy exists.
  - b. Each administrator is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise must have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.
  - c. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws or rules of the commission.
  - d. All meetings are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article VIII.
  - e. The commission may convene in a closed, nonpublic meeting if the commission must discuss:
    - (1) Noncompliance of a party state with its obligations under this compact;
    - (2) The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
    - (3) Current, threatened, or reasonably anticipated litigation;
    - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
    - (5) Accusing any person of a crime or formally censuring any person;
    - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

- (7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (8) Disclosure of investigatory records compiled for law enforcement purposes;
  - (9) Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or
  - (10) Matters specifically exempted from disclosure by federal or state statute.
- f. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for those actions, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
3. By a majority vote of the administrators, the commission shall prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:
- a. Establishing the fiscal year of the commission;
  - b. Providing reasonable standards and procedures:
    - (1) For the establishment and meetings of other committees; and
    - (2) Governing any general or specific delegation of any authority or function of the commission;
  - c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;
  - d. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;
  - e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws

- exclusively govern the personnel policies and programs of the commission; and
- f. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment and/or reserving of all of its debts and obligations.
  4. The commission shall publish its bylaws and rules, and any amendments to the bylaws and rules, in a convenient form on the website of the commission.
  5. The commission shall maintain its financial records in accordance with the bylaws.
  6. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
  7. The commission may:
    - a. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all party states;
    - b. Bring and prosecute legal proceedings or actions in the name of the commission. However, the standing of any licensing board to sue or be sued under applicable law may not be affected;
    - c. Purchase and maintain insurance and bonds;
    - d. Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations;
    - e. Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources;
    - f. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
    - g. Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. However, at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
    - h. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed. However, at all times the commission shall strive to avoid any appearance of impropriety;
    - i. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

- j. Establish a budget and make expenditures;
  - k. Borrow money;
  - l. Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators, or their representatives, and consumer representatives, and other such interested persons;
  - m. Provide and receive information from, and to cooperate with, law enforcement agencies;
  - n. Adopt and use an official seal; and
  - o. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of advanced practice registered nurse licensure and practice.
8. Financing of the commission.
- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
  - b. The commission may levy on and collect an annual assessment from each party state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.
  - c. The commission may not incur obligations of any kind before securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
  - d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
9. Qualified immunity, defense, and indemnification.
- a. The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against which the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. However, this subdivision may not be construed to protect any such person from suit and/or liability for any damage, loss, injury, or

- liability caused by the intentional, willful, or wanton misconduct of that person.
- b. The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel and the actual or alleged act, error, or omission may not result from that person's intentional, willful, or wanton misconduct.
  - c. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

#### **ARTICLE VIII - RULEMAKING**

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.
2. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
3. Before promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

  - a. On the website of the commission; and
  - b. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.
4. The notice of proposed rulemaking must include:

  - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
  - b. The text of the proposed rule or amendment, and the reason for the proposed rule;
  - c. A request for comments on the proposed rule from any interested person; and

- d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
5. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
6. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
7. The commission shall publish the place, time, and date of the scheduled public hearing.
  - a. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings must be recorded, and a copy must be made available upon request.
  - b. This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
8. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. By majority vote of all administrators, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. However, the usual rulemaking procedures provided in this compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
  - a. Meet an imminent threat to public health, safety, or welfare;
  - b. Prevent a loss of commission or party state funds; or
  - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.
12. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision may be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a



material change to a rule. A challenge must be made in writing, and delivered to the commission, before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

## **ARTICLE IX - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

### **1. Oversight.**

- a. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.
- b. The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.

### **2. Default, technical assistance, and termination.**

- a. If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
  - (1) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the commission; and
  - (2) Provide remedial training and specific technical assistance regarding the default.
- b. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- c. Termination of membership in this compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board, the defaulting state's licensing board, and each of the party states.
- d. A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
- e. The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated, unless agreed upon in writing between the commission and the defaulting state.



3. Any state that joins this compact after the commission's initial adoption of the advanced practice registered nurse uniform licensure requirements are subject to all rules that have been previously adopted by the commission.
4. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal does not take effect until six months after enactment of the repealing statute.
5. A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination.
6. This compact may not be construed to invalidate or prevent any advanced practice registered nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that does not conflict with the provisions of this compact.
7. This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon any party state until it is enacted into the laws of all party states.
8. Representatives of nonparty states to this compact must be invited to participate in the activities of the commission, on a nonvoting basis, before the adoption of this compact by all states.

#### **ARTICLE XI - CONSTRUCTION AND SEVERABILITY**

This compact must be liberally construed so as to effectuate the purposes of this compact. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Approved April 14, 2017

Filed April 17, 2017

## CHAPTER 289

### HOUSE BILL NO. 1289

(Representative Keiser)

AN ACT to amend and reenact subsection 1 of section 23-34-04 and section 43-17-31 of the North Dakota Century Code, relating to grounds for disciplinary action by the medical board.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-34-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A peer review organization shall report to an investigative panel of the North Dakota board of medicine any information that indicates a probable violation of ~~subsection 4, 5, 16, or 17~~ subdivision d, e, p, or q of subsection 1 of section 43-17-31.

**SECTION 2. AMENDMENT.** Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-17-31. Grounds for disciplinary action.**

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
  1. a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
  2. b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
  3. c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
  4. d. Habitual use of alcohol or drugs.
  5. e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
  6. f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
  7. g. Obtaining any fee by fraud, deceit, or misrepresentation.
  8. h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.

9. i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
10. j. The practice of medicine under a false or assumed name.
11. k. The advertising for the practice of medicine in an untrue or deceptive manner.
12. l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. o. Gross negligence in the practice of medicine.
16. p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
17. q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
19. s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
20. t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
21. u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
22. v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
23. w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

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24. x. The violation of any state or federal statute or regulation relating to controlled substances.
25. y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
26. z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
27. aa. The failure to properly monitor a physician assistant, a fluoroscopy technologist, or an emergency medical technician.
28. bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.
29. cc. The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.
- dd. Noncompliance with the physician health program established under chapter 43-17.3.
2. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

Approved March 22, 2017

Filed March 23, 2017

## CHAPTER 290

### HOUSE BILL NO. 1306

(Representatives Beadle, Boschee, Kading, Vetter)  
(Senators Meyer, Roers)

AN ACT to amend and reenact section 43-23-02 of the North Dakota Century Code, relating to the real estate commission; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 43-23-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-23-02. Commission - Term - Duties - Records.**

The governor shall appoint each member of the commission for a term of five years. Terms must be staggered so the term of one member expires each year. At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of five years. A commissioner may not serve more than two consecutive five-year terms. In the event of a vacancy on the commission for any reason the governor shall appoint a member for the unexpired term of that member.

A majority of the commission, in a duly assembled meeting, may perform and exercise all of the duties and powers devolving on the commission. The commission may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

The commission shall adopt a seal with North Dakota real estate commission engraved on the seal, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of such commission, must be received in evidence in all courts equally and with like effect as the original.

**SECTION 2. APPLICATION.** This Act applies to state real estate commission appointments of members which take place after July 31, 2017. This Act does not invalidate the current term of a member serving on the commission on August 1, 2017.

Approved March 22, 2017

Filed March 23, 2017

## CHAPTER 291

### HOUSE BILL NO. 1157

(Representatives B. Koppelman, D. Anderson, Roers Jones, Schneider)  
(Senators Grabinger, Kreun, J. Lee)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the physical therapy licensure compact.

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

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

#### ARTICLE I - PURPOSE

The purpose of this compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multistate physical therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

#### ARTICLE II - DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. sections 1209 and 1211.



2. "Adverse action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes substance abuse issues.
4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.
5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.
6. "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.
7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.
8. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
9. "Home state" means the member state that is the licensee's primary state of residence.
10. "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.
11. "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.
12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.
13. "Member state" means a state that has enacted the compact.
14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.
15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.
16. "Physical therapist assistant" means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

17. "Physical therapy", "physical therapy practice", and "the practice of physical therapy" mean the care and services provided by or under the direction and supervision of a licensed physical therapist.
18. "Physical therapy compact commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.
19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.
20. "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.
21. "Rule" means a regulation, principle, or directive promulgated by the commission which has the force of law.
22. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

### **ARTICLE III - STATE PARTICIPATION IN THE COMPACT**

1. To participate in the compact, a state must:
  - a. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;
  - b. Have a mechanism in place for receiving and investigating complaints about licensees;
  - c. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
  - d. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions in accordance with subsection 2;
  - e. Comply with the rules of the commission;
  - f. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and
  - g. Have continuing competence requirements as a condition for license renewal.
2. Upon adoption of this statute, the member state may obtain biometric-based information from each physical therapy licensure applicant and submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 U.S.C. section 534 and 42 U.S.C. section 14616.
3. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

4. Member states may charge a fee for granting a compact privilege.

#### **ARTICLE IV - COMPACT PRIVILEGE**

1. To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:
  - a. Hold a license in the home state;
  - b. Have no encumbrance on any state license;
  - c. Be eligible for a compact privilege in any member state in accordance with subsections 4, 7, and 8;
  - d. Have not had any adverse action against any license or compact privilege within the previous two years;
  - e. Notify the commission the licensee is seeking the compact privilege within a remote state;
  - f. Pay any applicable fees, including any state fee, for the compact privilege;
  - g. Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and
  - h. Report to the commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.
2. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of subsection 1 to maintain the compact privilege in the remote state.
3. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.
4. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.
5. If a home state license is encumbered, the licensee loses the compact privilege in any remote state until the following occur:
  - a. The home state license is no longer encumbered; and
  - b. Two years have elapsed from the date of the adverse action.
6. Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of subsection 1 to obtain a compact privilege in any remote state.
7. If a licensee's compact privilege in any remote state is removed, the individual loses the compact privilege in any remote state until the following occur:

- a. The specific period of time for which the compact privilege was removed has ended;
  - b. All fines have been paid; and
  - c. Two years have elapsed from the date of the adverse action.
8. Once the requirements of subsection 7 have been met, the licensee shall meet the requirements in subsection 1 to obtain a compact privilege in a remote state.

#### **ARTICLE V - ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

1. Home of record;
2. Permanent change of station; or
3. State of current residence if it is different from the permanent change of station state or home of record.

#### **ARTICLE VI - ADVERSE ACTIONS**

1. A home state has the exclusive power to impose adverse action against a license issued by the home state.
2. A home state may take adverse action based on the investigative information of a remote state, if the home state follows its own procedures for imposing adverse action.
3. This compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation must remain nonpublic if required by the member state's laws. Member states shall require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.
4. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.
5. A remote state may:
  - a. Take adverse actions as set forth in subsection 4 of article IV against a licensee's compact privilege in the state;
  - b. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, must be enforced in the latter state by any court of competent jurisdiction, according to the practice and

procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

c. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

6. Joint investigations.

a. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

b. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

**ARTICLE VII - ESTABLISHMENT OF THE PHYSICAL  
THERAPY COMPACT COMMISSION**

1. The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission:

a. The commission is an instrumentality of the compact states.

b. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

c. This compact may not be construed to be a waiver of sovereign immunity.

2. Membership, voting, and meetings.

a. Each member state is limited to one delegate selected by that member state's licensing board.

b. The delegate must be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

c. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

d. The member state board shall fill any vacancy occurring in the commission.

e. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

- f. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
  - g. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
3. The commission shall have the following powers and duties:
- a. Establish the fiscal year of the commission;
  - b. Establish bylaws;
  - c. Maintain its financial records in accordance with the bylaws;
  - d. Meet and take such actions as are consistent with the provisions of this compact and the bylaws;
  - e. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all member states;
  - f. Bring and prosecute legal proceedings or actions in the name of the commission, provided the standing of any state physical therapy licensing board to sue or be sued under applicable law may not be affected;
  - g. Purchase and maintain insurance and bonds;
  - h. Borrow, accept, or contract for services of personnel, including employees of a member state;
  - i. Hire employees; elect or appoint officers; fix compensation; define duties; grant such individuals appropriate authority to carry out the purposes of the compact; and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
  - j. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;
  - k. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall avoid any appearance of impropriety;
  - l. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
- m. Establish a budget and make expenditures;
- n. Borrow money;
- o. Appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and

- consumer representatives, and such other interested persons as may be designated in this compact and the bylaws:
- p. Provide and receive information from, and cooperate with, law enforcement agencies;
  - q. Establish and elect an executive board; and
  - r. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.
4. The executive board may act on behalf of the commission according to the terms of this compact:
- a. The executive board must be comprised of nine members:
    - (1) Seven voting members who are elected by the commission from the current membership of the commission;
    - (2) One ex officio, nonvoting member from the recognized national physical therapy professional association; and
    - (3) One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.
  - b. The ex officio members are selected by their respective organizations.
  - c. The commission may remove any member of the executive board as provided in bylaws.
  - d. The executive board shall meet at least annually.
  - e. The executive board shall:
    - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;
    - (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
    - (3) Prepare and recommend the budget;
    - (4) Maintain financial records on behalf of the commission;
    - (5) Monitor compact compliance of member states and provide compliance reports to the commission;
    - (6) Establish additional committees as necessary; and
    - (7) Other duties as provided in rules or bylaws.
5. Meetings of the commission.

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- a. All meetings are open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article IX.
  - b. The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss:
    - (1) Noncompliance of a member state with its obligations under the compact;
    - (2) The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;
    - (3) Current, threatened, or reasonably anticipated litigation;
    - (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
    - (5) Accusing any person of a crime or formally censuring any person;
    - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
    - (7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
    - (8) Disclosure of investigative records compiled for law enforcement purposes;
    - (9) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
    - (10) Matters specifically exempted from disclosure by federal or member state statute.
  - c. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.
  - d. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
6. Financing of the commission.



- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
  - b. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
  - c. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
  - d. The commission may not incur obligations of any kind before securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.
  - e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
7. Qualified immunity, defense, and indemnification.
- a. The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this subdivision may be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.
  - b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided this subdivision may not be construed to prohibit that person from retaining that person's own counsel, and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

### **ARTICLE VIII - DATA SYSTEM**

1. The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.
2. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:
  - a. Identifying information;
  - b. Licensure data;
  - c. Adverse actions against a license or compact privilege;
  - d. Nonconfidential information related to alternative program participation;
  - e. Any denial of application for licensure, and the reason for such denial; and
  - f. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
3. Investigative information pertaining to a licensee in any member state will only be available to other party states.
4. The commission promptly shall notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state is available to any other member state.
5. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.
6. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

### **ARTICLE IX - RULEMAKING**

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and

- amendments become binding as of the date specified in each rule or amendment.
2. If a majority of the legislatures of the member states reject a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then such rule has no further force and effect in any member state.
  3. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
  4. Before promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
    - a. On the website of the commission or other publicly accessible platform; and
    - b. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.
  5. The notice of proposed rulemaking must include:
    - a. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
    - b. The text of the proposed rule or amendment and the reason for the proposed rule;
    - c. A request for comments on the proposed rule from any interested persons; and
    - d. The manner in which interested persons may submit notice to the commission of the interested persons' intentions to attend the public hearing and any written comments.
  6. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
  7. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
    - a. At least twenty-five persons;
    - b. A state or federal governmental subdivision or agency; or
    - c. An association having at least twenty-five members.
  8. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

- a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
  - b. Hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
  - c. All hearings must be recorded. A copy of the recording must be made available on request.
  - d. This section may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. If written notice of intent to attend the public hearing by interested parties is not received, the commission may proceed with promulgation of the proposed rule without a public hearing.
11. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
12. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
    - a. Meet an imminent threat to public health, safety, or welfare;
    - b. Prevent a loss of commission or member state funds;
    - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
    - d. Protect public health and safety.
13. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds the revision results in a material change to a rule. A challenge must be made in writing, and delivered to the chair of the commission before the end of the notice period. If a challenge is not made, the revision takes

effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

## **ARTICLE X - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT**

### **1. Oversight.**

- a. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.**
- b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.**
- c. The commission is entitled to receive service of process in any such proceeding, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.**

### **2. Default, technical assistance, and termination.**

- a. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:**
  - (1) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the commission; and**
  - (2) Provide remedial training and specific technical assistance regarding the default.**
- b. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.**
- c. Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.**
- d. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.**

- e. The commission may not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
  - f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of such litigation, including reasonable attorney's fees.
3. Dispute resolution.
    - a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.
    - b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
  4. Enforcement.
    - a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
    - b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing member must be awarded all costs of such litigation, including reasonable attorney's fees.
    - c. The remedies herein are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

**ARTICLE XI - DATE OF IMPLEMENTATION OF THE INTERSTATE  
COMMISSION FOR PHYSICAL THERAPY PRACTICE AND  
ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT**

1. The compact comes into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.
2. Any state that joins the compact after the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the same.

- a. A member state's withdrawal does not take effect until six months after enactment of the repealing statute.
  - b. Withdrawal does not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.
4. This compact may not be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the provisions of this compact.
  5. This compact may be amended by the member states. An amendment to this compact may not become effective and binding upon any member state until it is enacted into the laws of all member states.

### **ARTICLE XII - CONSTRUCTION AND SEVERABILITY**

This compact must be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of this compact to any government, agency, person, or circumstance is not affected thereby. If this compact is held contrary to the constitution of any party state, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Approved March 13, 2017

Filed March 13, 2017

## CHAPTER 292

### HOUSE BILL NO. 1035

(Legislative Management)  
(Health Services Committee)

AN ACT to amend and reenact sections 43-28.1-07 and 43-28.1-08 of the North Dakota Century Code, relating to the dentist loan repayment program; to repeal section 43-28.1-06 of the North Dakota Century Code, relating to breach of the dentist loan repayment program; and to provide for application.

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

**SECTION 1. AMENDMENT.** Section 43-28.1-07 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-28.1-07. Release from ~~contract~~ Contract obligation.**

1. The state health council shall release ~~a dentist from the dentist's loan repayment contract, without penalty, if:~~
  - a. ~~The dentist has completed the service requirements of the contract;~~
  - b. ~~The dentist is unable to complete the service requirement of the contract because of a permanent physical disability;~~
  - c. ~~The dentist demonstrates to the state health council extreme hardship or shows other good cause justifying the release; or~~
  - d. ~~The dentist dies.~~
2. ~~A decision by the state health council not to release a dentist from the dentist's loan repayment contract without penalty is reviewable by district court~~enter a contract with a selected dentist. The contract must provide the state health council agrees to make payments of loan repayment funds to the selected dentist, subject to the dentist meeting the requirements and limitations established by the state health council under this chapter.

**SECTION 2. AMENDMENT.** Section 43-28.1-08 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-28.1-08. Payment - Termination.**

1. 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 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.~~



2. Except as otherwise provided, the state health council shall make payments under this chapter at the conclusion of each of the five twelve-month periods of service during which the dentist met the qualifying terms of the contract. The state health council may make a prorated payment under this chapter if during the twelve-month period the dentist failed to meet the qualifying terms of the contract.
3. Payments under this chapter terminate upon the earlier of completion of five years as a participant in this loan repayment program or failure of the dentist to meet the qualifying terms under the contract.

**SECTION 3. REPEAL.** Section 43-28.1-06 of the North Dakota Century Code is repealed.

**SECTION 4. APPLICATION.** In the case of a dental student loan repayment contract under chapter 43-28.1 which was entered before the effective date of this Act, the state health council and that dentist may amend the terms of the contract to comply with this Act.

Approved March 21, 2017

Filed March 22, 2017

## CHAPTER 293

### HOUSE BILL NO. 1093

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

AN ACT to amend and reenact subsection 10 of section 43-42-01 and sections 43-42-03 and 43-42-05 of the North Dakota Century Code, relating to respiratory care and polysomnographic licensure.

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

**SECTION 1. AMENDMENT.** Subsection 10 of section 43-42-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

3. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules adopted by the board under section 43-42-04.1. The board shall establish fees not in excess of ninety dollars for issuance and for renewal of a registered polysomnographic technologist license.
4. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
5. The board shall refuse to license any applicant or, shall suspend or revoke any license, or may fine, require additional education or appropriate treatment for any licensee, after proper notice and a hearing, if the applicant or licensee:
  - a. Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, or a registered polysomnographic technologist.
  - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
  - c. Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist.
  - d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.
  - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
  - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care or polysomnography and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
  - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
  - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.
7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by

the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board.

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

**SECTION 3. AMENDMENT.** Section 43-42-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-42-05. Application of chapter.**

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory therapist and the person is identified as a "student respiratory therapist".
2. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory therapists and certified respiratory therapists.
3. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory therapist ~~or~~, a certified respiratory therapist, or a registered polysomnographic technologist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory therapist ~~or~~, certified respiratory therapist, or registered polysomnographic technologist.
4. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold out to be a registered or certified respiratory therapist.
5. This chapter does not prohibit a ~~respiratory therapist licensee under this chapter~~ from performing advances in the art or techniques of ~~respiratory care~~ the licensee's licensed profession learned through formal or specialized training.
6. This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

Approved March 2, 2017

Filed March 3, 2017

## CHAPTER 294

### HOUSE BILL NO. 1237

(Representative Owens)  
(Senator Burckhard)

AN ACT to amend and reenact section 43-55-05 of the North Dakota Century Code, relating to professional employer organization bonding requirements.

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

**SECTION 1. AMENDMENT.** Section 43-55-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-55-05. Bond.**

1. A professional employer organization shall maintain a bond with a minimum value of the ~~greater~~lesser amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state ~~but not to exceed five hundred thousand dollars.~~
2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
4. ~~Notice~~A professional employer organization shall provide the secretary of state notice of cancellation or nonrenewal of the ~~surety~~ bond required by this section ~~shall be provided to the secretary of state~~ at least forty-five days before cancellation or nonrenewal of the bond.
5. As used in this section, "bond" means a surety bond or an irrevocable letter of credit.

Approved March 24, 2017

Filed March 24, 2017

## CHAPTER 295

### SENATE BILL NO. 2198

(Senators J. Lee, Dever)  
(Representatives Beadle, Weisz)

AN ACT to amend and reenact sections 43-62-01, 43-62-02, 43-62-03, 43-62-04, 43-62-08, 43-62-09, 43-62-11, 43-62-14, 43-62-15, and 43-62-18, and subsections 7 and 13 of section 43-62-19 of the North Dakota Century Code, relating to the regulation of medical imaging and radiation therapy; and to declare an emergency.

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

<sup>137</sup> **SECTION 1. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-62-01. Definitions.**

##### As used in this chapter:

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.
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,~~ or magnetic resonance imaging technologist.
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 magnetic resonance imaging, 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

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<sup>137</sup> Section 43-62-01 was also amended by section 51 of Senate Bill No. 2327, chapter 199.

nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.

7. "Primary modality" means an individual practicing as a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist.
8. "Protected health information" has the same meaning as provided under section 23-01.3-01.
9. "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.
- 8-10. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy an individual, other than a licensed practitioner or authorized user, who performs procedures and operate applies ionizing radiation therapy equipment emitted from x-ray machines, particle accelerators, or sealed radioactive sources to human beings for therapeutic purposes.

**SECTION 2. AMENDMENT.** Section 43-62-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-02. License required.**

~~After December 31, 2015, an~~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.

<sup>138</sup> **SECTION 3. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. 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, or magnetic resonance imaging technologist holding a license in the medical imaging or radiation therapy modality for which the student is enrolled or attending ~~under this chapter.~~

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<sup>138</sup> Section 43-62-03 was also amended by section 52 of Senate Bill No. 2327, chapter 199.

4. An individual administering medical imaging or radiation ~~procedures~~therapy 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.

**SECTION 4. AMENDMENT.** Section 43-62-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-04. North Dakota medical imaging and radiation therapy board of examiners.**

1. The governor shall appoint a ~~state board of North Dakota~~ North Dakota medical imaging and radiation therapy ~~medical examiners board~~ consisting of nine members including:
  - a. Five medical imaging or radiation therapy professionals, ~~one each from~~ chosen to represent the areas of radiography, radiation therapy, nuclear medicine technology, sonography, magnetic resonance imaging, 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 pursuant to subsection 2 of section 43-62-14 in the member's ~~medical imaging or radiation therapy~~ primary modality in this state.
  - c. Be currently certified by a ~~nationally recognized~~ certification organization in the member's ~~medical imaging or radiation therapy~~ primary 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.

**SECTION 5. AMENDMENT.** Section 43-62-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-08. 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.

**SECTION 6. AMENDMENT.** Section 43-62-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-09. 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. The board may

establish an investigative panel to conduct an investigation under this subsection and may subpoena records.

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, or other employers, 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.

**SECTION 7. AMENDMENT.** Section 43-62-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-11. 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. Protected health information in the possession of the board is an exempt record.

**SECTION 8. AMENDMENT.** Section 43-62-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-14. License requirements.**

1. The board ~~may~~shall issue a license to ~~any~~any qualified applicant ~~who has submitted. To qualify for licensure, an applicant shall comply with the modality licensure requirements under subsection 2, 3, 4, or 7, comply with board requirements adopted by rules, and submit~~ 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~~high school approved by the state board of higher education or passed an approved equivalency test.
2. ~~In addition to the requirements of subsection 1~~To qualify for licensure to practice one or more of the primary modalities as a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, sonographer, or magnetic resonance imaging technologist, an individual seeking to obtain a license~~applicant shall meet the requirements for a~~the~~applicable~~ specific modality of medical imaging or radiation therapy shall comply with the following requirements, including:
  - 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~~appropriate for the specified modality. 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. A licensee under subsection 2 may not practice a primary modality without meeting the requirements for each specific primary modality being practiced. However, a licensee under subsection 2 may practice other modalities recognized by rule upon meeting the continuing education requirements for each modality practiced by the licensee.
4. An applicant who is not licensed for a primary modality under subsection 2 may qualify for licensure to practice a modality recognized by the board, other than the primary modalities, by complying with certification or registration requirements established by the board by rule. The scope of a license issued under this subsection limits the licensee to the practice of the specific modality for which the applicant meets the requirement. However, a license issued under this subsection may be issued in conjunction with a license for additional modalities issued under subsection 7.

5. The board may establish by rule specific changes or exceptions for those modalities in which the accreditation agency or certification organization differs in certification or registration requirements from this chapter.
- 3.6. The board, upon application and payment of proper fees, may grant a license to an individual applicant who submits the necessary application and fees 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.
7. The board may establish unique individualized licensing and practice standards and requirements for an applicant who does not meet the licensure requirements to receive a license in at least one primary modality of medical imaging or radiation therapy under subsection 2, or who meets the licensure requirements for one primary modality but not for another primary modality the applicant desires to practice.
  - a. The board may grant a license limited to one or more modalities practiced by an applicant for three or more of the five years preceding January 1, 2017. The board may establish standards and requirements for the licensee designed to maintain reasonable access to public services and to promote public safety, including continuing education. A license granted for a specified modality under this subdivision expires and may not be renewed if the licensee attains a license in that modality under subsection 2 or 4.
  - b. The board may grant a license to an applicant who began practice after December 31, 2016, for a specified modality or modalities if the applicant passes a board-approved examination and maintains specified continuing education requirements for each modality. The board may grant a conditional license allowing an applicant under this subdivision to practice before passing the examination.

<sup>139</sup> **SECTION 9. AMENDMENT.** Section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-15. Scope of practice.**

1. A license issued by the board under this chapter must specify each medical imaging or radiation therapy modality for which the licensee is qualified to practice under section 43-62-14.
2. The board shall establish licensureadopt by rule standards concerning scope of practice for the following medical imaging and radiation therapy modalities, including:
  - a. Nuclear medicine technologist;
  - b. Radiation therapist;
  - c. Radiographer;

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<sup>139</sup> Section 43-62-15 was also amended by section 53 of Senate Bill No. 2327, chapter 199.

- d. Radiologist assistant;
  - e. Sonographer; and
  - f. Magnetic resonance imaging technologist.
- ~~2.3. An individual holding a license under this chapter may perform~~A licensee's performance of medical imaging or radiation therapy ~~procedures~~ on humans for diagnostic or therapeutic purposes ~~only~~must be by written, facsimile, electronic, or verbal prescription of an individual authorized by this state to prescribe medical imaging or radiation therapy ~~procedures~~ and must be under the supervision of a licensed practitioner.
- ~~3.4. An individual holding a license under this chapter may perform~~A licensee's performance of medical imaging and radiation therapy ~~procedures~~ on humans for diagnostic or therapeutic purposes ~~only~~within is limited to the scope of the medical imaging and radiation therapy modality of that license as specified under the rules adopted by the board.

**SECTION 10. AMENDMENT.** Section 43-62-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-18. 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, which~~ must be deposited in the state general fund.

7. Payment of the board's expenses, including legal fees, which may be deposited in the board's operating fund.

**SECTION 11. AMENDMENT.** Subsections 7 and 13 of section 43-62-19 of the North Dakota Century Code are amended and reenacted as follows:

7. The violation of any provision of this chapter ~~or~~, any rule of the board, or any federal or state law applicable to the practice of medical imaging or radiation therapy, or any action, stipulation, limitation, condition, or agreement imposed by the board or its investigative panels.

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.

**SECTION 12. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 15, 2017

Filed March 16, 2017

## CHAPTER 296

### SENATE BILL NO. 2240

(Senator O. Larsen)

AN ACT to create and enact a new section to chapter 43-53 of the North Dakota Century Code, relating to temporary emergency suspension of marriage and family therapists; and to amend and reenact section 43-53-03 of the North Dakota Century Code, relating to exceptions from licensure for marriage and family therapists.

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

**SECTION 1. AMENDMENT.** Section 43-53-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-53-03. Exemptions.**

1. An individual is exempt from the requirements of this chapter if:
  - a. The individual is practicing marriage and family therapy as part of that individual's duties as an employee of a recognized academic institution or a governmental institution or agency while performing those duties for which the individual is employed by such a facility, institution, or agency.
  - b. The individual is a marriage and family therapy intern or individual preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility or supervisory arrangement recognized and approved by the board if:
    - (1) The individual is a student in a master's or doctorate program of marriage and family therapy; and
    - (2) The individual is designated by a title such as "marriage and family therapy intern", "marriage therapy intern", "family therapy intern", or other title clearly indicating such training status.
  - c. The individual is a member of the clergy of any religious denomination and providing services within the scope of ministerial duties.
  - d. The individual is a volunteer for or is employed by a nonprofit agency or community organization and the individual does not hold out to the public that the individual is a licensed marriage and family therapist.
2. This chapter does not prevent any person licensed by the state from doing work within the standards and scope of practice of that person's profession, including the practice and advertising of marriage and family therapy services.

**SECTION 2.** A new section to chapter 43-53 of the North Dakota Century Code is created and enacted as follows:

**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 the continued practice by a licensed marriage and family therapist or an associate marriage and family therapist would create significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the licensed marriage and family therapist's license or the associate marriage and family therapist's license is required to reasonably protect the public from this risk of harm, the board may order a temporary suspension ex parte.
  - a. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge.
  - b. The board shall give prompt written notice of the suspension to the licensed marriage and family therapist or associate marriage and family therapist 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.
  - c. The board shall make available to the licensed marriage and family therapist or associate marriage and family therapist a specific description of any documents relied upon by the board in ordering the temporary suspension.
2. An ex parte suspension remains in effect until a final order is issued after an administrative hearing or appeal to the district court under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct an administrative hearing on the merits of the allegations to determine what disciplinary action, if any, will be taken against the licensed marriage and family therapist or associate marriage and family therapist who is the subject of the ex parte suspension. The administrative hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The licensed marriage and family therapist or associate marriage and family therapist is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The licensed marriage and family therapist or associate marriage and family therapist may appeal the ex parte temporary suspension order to the district court. On appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The district 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.

Approved March 22, 2017

Filed March 23, 2017



## CHAPTER 297

### SENATE BILL NO. 2202

(Senators J. Lee, Anderson, Meyer, Nelson)  
(Representatives Porter, Delmore)

AN ACT to amend and reenact section 43-48-03 and subsection 2 of section 43-48-05 of the North Dakota Century Code, relating to clinical laboratory practice exemptions and board membership.

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

<sup>140</sup> **SECTION 1. AMENDMENT.** Section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-48-03. Exemptions.**

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

1. Physicians duly and currently licensed to practice medicine.
2. Nurses duly and currently licensed to practice nursing and practicing within the scope of the nursing license.
3. Persons performing clinical testing for teaching or research, provided that the results of any examination performed in such laboratories are not used in health maintenance, diagnosis, or treatment of disease.
4. Persons employed by the United States government, or ~~any~~ bureau, division, or agency thereof, and working in a licensed laboratory.
5. Any person in the pursuit of a supervised course of study leading to a degree at an accredited or educational program approved by the board.
6. Phlebotomy personnel performing phlebotomy procedures.
7. Persons performing testing for their own personal use and persons performing screening tests for mass screening under appropriate supervision.
8. Agents of the state or federal government performing hematological tests for anemia upon participants of the special supplemental food program for women, infants, and children.
9. An individual supervised by an individual ~~who is~~ licensed by the board and who performs tests and uses methods identified by rules adopted by the board.
10. Perfusionists performing clinical laboratory tests for hematology, coagulation, and chemistry during the course of a patient's perfusion procedures.

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<sup>140</sup> Section 43-48-03 was also amended by section 50 of Senate Bill No. 2327, chapter 199.

11. Personnel of the division of laboratory services of the state department of health participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.
12. A person licensed or registered under another chapter of this title and carrying out the therapy or practice for which the person is licensed or registered.
13. Personnel performing whole blood glucose waived tests as categorized by the food and drug administration based on the criteria established by the Clinical Laboratory Improvement Act of 1988 [42 U.S.C. 263a et seq.].

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

2. The board must be composed of:
  - a. ~~One physician recommended by the North Dakota pathology organization. The North Dakota pathology organization shall submit to the governor a list of physicians qualified to serve, such list to contain at least three names licensed to practice medicine in the state and qualified to practice as a pathologist.~~
  - b. The following laboratory persons, whose names may be included on a list of such persons qualified to serve submitted to the governor by the North Dakota society for medical technology or other interested persons, such list to contain at least three names for each vacancy:
    - (1) One administrative nonphysician clinical laboratory director;
    - (2) One clinical laboratory scientist; and
    - (3) One clinical laboratory technician.
  - c. Two consumer members, each of whom must be a citizen of the United States, a resident of North Dakota for at least two years before the date of appointment, and a current resident of North Dakota.
  - d. The state health officer or such officer's designee, ex officio.

Approved April 7, 2017

Filed April 7, 2017

## CHAPTER 298

### SENATE BILL NO. 2088

(Senators Anderson, J. Lee)  
(Representatives Seibel, Westlind)

AN ACT to create and enact a new section to chapter 43-45 of the North Dakota Century Code, relating to licensed clinical addiction counselors; and to amend and reenact sections 43-45-01, 43-45-02, 43-45-03, 43-45-04, 43-45-05, 43-45-05.1, 43-45-05.2, 43-45-05.3, 43-45-05.4, 43-45-06, 43-45-07, 43-45-07.1, 43-45-07.2, and 43-45-07.3 of the North Dakota Century Code, relating to the scope of practice for addiction counselors and the licensure authority of the board of addiction counseling examiners.

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

**SECTION 1. AMENDMENT.** Section 43-45-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-45-01. Definitions.**

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

1. "Addiction counseling" means the provision of counseling or assessment of ~~persons regarding their use or abuse of alcohol or a controlled substance~~an individual regarding a substance-related or addictive disorder identified by the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fifth edition, text revision (2013).
2. "Board" means the board of addiction counseling examiners.
3. "Clinical training" means training in addiction counseling, approved by the board.
4. "Internship" means work experience in a licensed addiction treatment facility under the supervision of a clinical supervisor registered by the board.
5. "Licensee" means an individual licensed by the board to practice addiction counseling.
6. "Private practice of addiction counseling" means the independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling.

**SECTION 2. AMENDMENT.** Section 43-45-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-45-02. Board of addiction counseling examiners - Composition.**

The governor shall appoint a seven-member board of addiction counseling examiners. The ~~members shall~~membership must include:

1. Five members who are ~~licensed addiction counselors~~licensees actively engaged in the practice of addiction counseling, one of whom must be actively engaged in the private practice of addiction counseling.
2. Two members who are laypersons.

**SECTION 3. AMENDMENT.** Section 43-45-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-03. Board member terms.**

The governor shall appoint new board members. Appointments must be for three-year terms, but ~~no person~~an individual may not be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed.

**SECTION 4. 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 addiction counselor, licensed clinical addiction counselor, and masters addiction counselor licenses under this chapter.
  - c. Establish ethical standards of practice for ~~persons holding a license~~licensee 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 and addiction counselor 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~~ the board's duties under this chapter.

**SECTION 5. AMENDMENT.** Section 43-45-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05. Board meetings.**

1. The board shall meet at least quarterly. A majority of the members constitute a quorum.
2. Each board member shall serve without compensation but ~~shall~~ is entitled to receive expenses as provided in section 54-06-09.

**SECTION 6. AMENDMENT.** Section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.1. Initial licenses.**

1. The board shall issue an initial license as an addiction counselor, licensed clinical addiction counselor, or masters addiction counselor to an applicant who has met all of the following requirements:
  - a. ~~Has successfully~~ Successfully completed board-approved coursework, ~~approved by the board,~~ at an accredited college or university.
  - b. ~~Has successfully~~ Successfully completed one or more oral or written examinations approved by the board for this purpose.
  - c. ~~Has successfully~~ Successfully completed a clinical training program approved by the board or accumulated experience as established by the board by rule.
  - d. ~~Has satisfied~~ Satisfied to the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.
2. For the clinical training program or accumulated experience required of an intern seeking initial licensure, at least fifty percent of the required supervision must be provided by a supervising licensed addiction counselor, and the additional supervision may be with other professionals who are designated by

the supervising addiction counselor, approved by the board, and competent in the area of practice being supervised. The other professional must be registered as a clinical supervisor by the board that licenses the other professional.

3. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor, licensed clinical addiction counselor, or masters addiction counselor under the laws of another jurisdiction that imposes at least substantially the same requirements that are imposed under this chapter.
- ~~3.4. An applicant who is denied~~If the board denies a licensure must be notifiedapplication, the board shall notify the applicant in writing of the reasons for denial and of the applicant's right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

**SECTION 7. AMENDMENT.** Section 43-45-05.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.2. Representation to the public.**

1. A person may not represent to the public that the person is an addiction counselor, a licensed clinical addiction counselor, or a masters addiction counselor or engage in the practice of addiction counseling in this state unless the person is a ~~licensed addiction counselor~~licensee.
2. The license issued by the board under the provisions of this chapter must be prominently displayed at the principal place of business where the ~~addiction counselor~~licensee practices.

**SECTION 8. AMENDMENT.** Section 43-45-05.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.3. Private practice of addiction counseling.**

A person may not engage in the private practice of addiction counseling unless that person is an individual registered with the board as eligible for private practice under criteria established by board rule.

**SECTION 9. AMENDMENT.** Section 43-45-05.4 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.4. 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~~by the board.
- 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 10. AMENDMENT.** Section 43-45-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-06. Addiction counseling practice - Exemptions.**

1. ~~Nothing in this~~This chapter may not be construed to prevent any ~~person~~person ~~individual~~individual from doing work within the standards and ethics of that ~~person's~~individual's profession and calling, ~~provided if that the person~~provided if that the person ~~individual~~individual does not represent to the public, by title or by use of the initials L.A.C., ~~L.C.A.C., or M.A.C., that the person~~L.C.A.C., or M.A.C., that the person ~~individual~~individual is engaging in addiction counseling.
2. ~~Nothing in this~~This chapter may not be construed to prevent addiction counseling trainees or interns in board-approved programs from engaging in addiction counseling related to training.

**SECTION 11. AMENDMENT.** Section 43-45-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-07. Renewal of license.**

1. All licenses are effective when granted by the board.
2. ~~All licenses of licensed addiction counselors~~All licenses issued by the board expire on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial under section 43-45-07.1 do not exist.
4. At the time of renewal the board shall require each applicant to present satisfactory evidence ~~that the applicant has~~ completed the continuing education requirements specified by the board.
5. If the completed application for renewal is not received by December first of the odd-numbered year, a late fee will be charged.
6. If the completed application for renewal is not received on or before the expiration date, the license expires and the ~~person~~person ~~individual~~individual may not practice addiction counseling. The license may be renewed within thirty days from the date of expiration of the license if the completed application for renewal and the late fee are received within thirty days from the date of expiration of the license.

7. If a completed application for renewal of license is not received within thirty days from the date of expiration of the license, relicensure requires the licensee must former licenseholder to reapply for licensure.
8. 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 12. AMENDMENT.** Section 43-45-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-07.1. Grounds for disciplinary proceedings.**

1. The board may deny an application; and may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing ~~that the applicant or holder of the license has engaged in~~ unprofessional conduct. Unprofessional conduct includes:
  1. a. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.
  2. b. Violating rules set by the board.
  3. c. Violating a provision of this chapter.
  4. d. Violating the professional code of conduct as adopted by the board.
  5. e. Being adjudged guilty of an offense determined by the board to have a direct bearing on an applicant's or holder of the license's ability to ~~serve~~provide addiction counseling to the public as an ~~addiction counselor~~ licensee or being adjudged guilty of any offense and being insufficiently rehabilitated as determined by the board under section 12.1-33-02.1.
2. One year from the date of the revocation, ~~the~~ a former licenseholder may make application for initial licensure.

**SECTION 13. AMENDMENT.** Section 43-45-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-07.2. Reporting obligations.**

1. A person ~~who has~~ with knowledge of any conduct constituting grounds for discipline under this chapter may report the violation to the board.
2. ~~The~~ A hospital, clinic, or other health care ~~institution, facility, institution,~~ institution, or organization shall report to the board any action taken by the hospital, clinic, or other health care facility, institution, or organization to revoke, suspend, restrict, or condition ~~an addiction counselor's~~ a licensee's privilege to practice or treat patients in the hospital, clinic, or other health care facility or institution, or as part of the organization, any denial of privileges or any other disciplinary action.



**SECTION 14. AMENDMENT.** Section 43-45-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-07.3. Complaints - Investigations.**

1. A person may file a written complaint with the board citing the specific allegations of unprofessional conduct by an ~~addiction counselor~~ licensee. The board shall notify the ~~addiction counselor~~ licensee of the complaint and request a written response from the ~~addiction counselor~~ licensee.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the complainant.
3. ~~An addiction counselor~~ A licensee 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 records when reasonably requested by the board and accompanied by the appropriate release.
4. In order to pursue the investigation, the board ~~has the power to~~ may subpoena and examine witnesses and records, including patient records, and ~~to~~ copy, photograph, or take samples. ~~#The board~~ The board may require the ~~licensed addiction counselor~~ licensee to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interest of the public that this evaluation be secured. A written request from the board constitutes authorization to release information. The patient records that are released to the board are not public records.
5. Unless there is a patient release on file allowing the release of information at the public hearing, all ~~data and information, including patient records,~~ acquired by the board in ~~its~~ the board's investigation are confidential and ~~closed to the public~~. All board meetings ~~wherein~~ wherein at which patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

**SECTION 15.** A new section to chapter 43-45 of the North Dakota Century Code is created and enacted as follows:

**Licensed clinical addiction counselor.**

1. Under section 43-45-05.1, the board shall issue an initial license as a licensed clinical addiction counselor to a qualified applicant who:
  - a. Applies for licensure under this section before January 1, 2024;
  - b. On December 31, 2018, was licensed in this state as an addiction counselor; and
  - c. Completed ten thousand hours of full-time clinical experience as a licensed addiction counselor.

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2. The scope of practice of a licensed clinical addiction counselor is the same as the scope of practice of a masters addiction counselor.

Approved April 7, 2017

Filed April 7, 2017

## CHAPTER 299

### SENATE BILL NO. 2033

(Legislative Management)  
(Health Services Committee)

AN ACT to amend and reenact subsection 4 of section 43-41-04, sections 43-41-07 and 43-47-06, and subsection 7 of section 43-53-01 of the North Dakota Century Code, relating to licensure requirements for behavioral health professionals; and to provide for a report to the legislative management.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The board shall issue~~To obtain a license as a licensed independent to practice clinical social worker to work, an applicant for licensure by examination shall submit to the board a written application in the form prescribed by the board and provide satisfactory evidence the applicant who:
  - a. ~~Has a doctorate or master's degree in social work from a college or university~~an approved social work program.
  - b. ~~Has passed~~Passed an examination approved by the board for this purpose.
  - c. ~~Has satisfied the board that within~~Within a four-year period the applicant ~~has, successfully completed three thousand hours of supervised post-master's clinical social work experience. The initial one thousand five hundred of the required hours must have been under the supervision of a licensed independent clinical social worker, or, if. Additional hours of supervision may be under other qualified mental health professionals approved by the board if barriers due to the geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional. However, if an applicant began that supervised post-master's clinical social work experience before August 1, 2009, a licensed certified~~master's social worker who has two years of experience, a licensed psychologist with a doctorate degree, or a licensed psychiatrist may have supervised the required hours. The applicant may demonstrate to the board's satisfaction that experience in the practice of clinical social work meets or exceeds the minimum supervisory requirements of the board.
  - d. ~~Has satisfied the board that the applicant agrees~~Agrees to adhere to the code of social work ethics adopted by the board.
  - e. Is of good moral character. In determining the character of an applicant in a licensure decision, the board shall consider information obtained through reports made under section 43-41-04.2.

- f. Paid all applicable fees specified by the board regarding the licensure process.

<sup>141</sup> **SECTION 2. AMENDMENT.** Section 43-41-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-41-07. Qualification for licensure by an applicant licensed in another jurisdiction.**

An applicant may be granted a license upon satisfactory proof to the board that the applicant is licensed in good standing under the laws of another jurisdiction that imposes substantially the same requirements as this chapter and a board determination that at the time of application for licensure under this section the applicant possesses qualifications or experience in the practice of social work which are substantially similar to the minimum requirements under this chapter. The applicant shall pay the licensure fees specified by the board.

**SECTION 3. AMENDMENT.** Section 43-47-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-47-06. Licenses - Qualifications - Reciprocity.**

1. Except as otherwise provided in this chapter, ~~no~~ person may not engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
  - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
  - b. ~~Has provided~~Provided personal and professional recommendations that meet the requirements adopted by the board and ~~has~~ satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
  - c. Has two years of supervised experience, at least fifty percent of which must have been under a licensed professional counselor, or its equivalent as determined by the board, and the additional supervised experience may have been with other qualified professionals designated by the board which are competent in the area of practice being supervised, if barriers due to geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional;
  - d. ~~Has provided~~Provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended

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<sup>141</sup> Section 43-41-07 was also amended by section 26 of Senate Bill No. 2042, chapter 97.

- client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
- e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.
3. The board shall issue a license as a licensed associate professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:
    - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
    - b. ~~Has provided~~Provided personal and professional recommendations that meet the requirements adopted by the board and ~~has~~ satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
    - c. ~~Has provided~~Provided a written plan for supervised experience which meets the requirements adopted by the board.
  4. The board may waive the formal examination requirements for a professional counselor license ~~whenif~~ the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar to or greater than those set by the board.
  5. A professional counselor shall renew the license every two years. The board shall renew a license upon payment of a fee set by the board and upon demonstration by the licenseholder of completion of continuing education requirements set by the board.
  6. An associate professional counselor initially licensed under this chapter may be licensed for no more than two years. The associate professional counselor's license may not be extended beyond two years ~~only~~ except upon recommendation of the associate professional counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate professional counselor's training program.

**SECTION 4. AMENDMENT.** Subsection 7 of section 43-53-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Qualified supervision" means the supervision of clinical services, in accordance with standards established by the board, by an individual who has been recognized by the board as an approved supervisor. At least fifty percent of the hours of qualified supervision must be with an approved supervisor who is a licensed marriage and family therapist and additional hours of qualified supervision may be with other professionals designated by the approved supervisor and acting under the approved supervisor. The other professional must be approved by the board, approved by that individual's licensing authority to supervise interns if appropriate, and competent in the area of practice being supervised. The marriage and family therapist approved supervisor remains the applicant's supervisor of record.

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**SECTION 5. BEHAVIORAL HEALTH PROFESSIONAL BOARDS - REPORT TO LEGISLATIVE MANAGEMENT.** During the 2017-18 interim, the North Dakota board of social work examiners, board of addiction counseling examiners, board of counselor examiners, and North Dakota marriage and family therapy licensure board shall report to the legislative management on the status of implementation of supervision and training requirements provided in this Act.

Approved April 17, 2017

Filed April 17, 2017

## CHAPTER 300

### SENATE BILL NO. 2172

(Senators Oban, Anderson, Poolman)  
(Representatives Rohr, Schreiber-Beck, Guggisberg)

AN ACT to create and enact a new section to chapter 43-37 of the North Dakota Century Code, relating to licensure of speech-language pathology assistants; to amend and reenact sections 43-37-02, 43-37-03, 43-37-04, 43-37-04.1, 43-37-05, 43-37-06, 43-37-08, 43-37-09, 43-37-13, and 43-37-18 of the North Dakota Century Code, relating to the state board of examiners on audiology and speech-language pathology and the regulation of speech-language pathology assistants; to repeal section 43-37-01 of the North Dakota Century Code, relating to legislative intent; to provide a penalty; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 43-37-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-37-02. Definitions.**

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

1. "Audiologist" means ~~a person who practices an individual licensed by the board to practice~~ audiology and ~~who holds out to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any similar title or description of service. A person may not use the term "audiologist" in a personal reference unless all the requirements of this chapter pertaining to audiology are met.~~
2. "Audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and disorders of hearing including vestibular testing, for the purpose of evaluating, identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals.
3. "Board" means the state board of examiners on audiology and speech-language pathology.
4. "Habilitation" and "rehabilitation" include hearing aid evaluation and recommendation, auditory training, and speech reading.
5. "Person"-"Licensee" means ~~a human being an audiologist, speech-language pathologist, or speech-language pathology assistant.~~
6. "Speech-language pathologist" means ~~a person who practices an individual licensed by the board to practice~~ speech-language pathology and ~~meets all requirements of this chapter pertaining to speech-language pathology.~~

7. "Speech-language pathology" means the application of principles, methods, and procedures for measurement, testing, evaluation, identification, prediction, counseling, or instruction related to the development and disorders of speech, language, voice, cognitive-communication, swallowing, and augmentative alternative communication for the purpose of identifying, evaluating, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals.
8. "Speech-language pathology assistant" means an individual licensed by the board to assist in the practice of speech-language pathology.

**SECTION 2. AMENDMENT.** Section 43-37-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-03. License required - Exceptions.**

1. A person may not practice audiology or speech-language pathology, assist in the practice of speech-language pathology, or represent that the person is an audiologist ~~or~~ speech-language pathologist, or speech-language pathology assistant in this state unless licensed annually in accordance with this chapter. However, this
2. A person may not hold out to the public by any title, abbreviation, or description of services incorporating the words audiologist, hearing clinician, hearing therapist, speech-language pathologist, speech-language pathologist assistant, or any similar title, abbreviation, or description of service unless licensed in accordance with this chapter.
3. This chapter does not prevent or restrict:
  - 1- a. A physician ~~or surgeon~~ from engaging in the practice of medicine in this state.
  - 2- b. A hearing aid specialist from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33.
  - 3- c. Any person licensed in this state by any other law from engaging in the profession or occupation for which licensed.
  - 4- d. ~~A person~~An individual who holds a valid certificate or credential as a speech-language pathologist, speech-language pathology paraprofessional, or teacher of the hearing-impaired; which is issued by the department of public instruction or the education standards and practices board, or ~~a person~~an individual employed as an audiologist or speech-language pathologist by the government of the United States, if ~~such person~~that individual performs speech-language pathology or audiology services solely within the confines or under the jurisdiction of the governmental or state educational organization by which employed. However, ~~such person may,~~ without obtaining a license under this chapter, that individual may consult with or disseminate that ~~person's~~individual's research findings and other scientific information to individuals practicing speech-language pathologists pathology or audiologists audiology outside the jurisdiction of the organization by which that ~~person~~individual is employed.



5. ~~e.~~ The activities and services of a person ~~an individual~~ pursuing a course of study leading to a degree in speech-language pathology, communication disorders, or audiology at a college or university if ~~such~~ the activities and services constitute a part of a supervised course of study and ~~such person~~ that individual is designated an ~~an~~ audiology, communication disorder, or speech-language pathology intern, an ~~an~~ audiology, communication disorder, or speech-language pathology trainee, or by any other ~~such title~~ title clearly indicating the training status appropriate to the level of training.
6. ~~The activities and services of persons fulfilling the requirements of subsection 3 of section 43-37-04.~~
7. ~~f.~~ The performance of audiology or speech-language pathology services in this state by any person ~~an individual~~ not a resident of this state who is not licensed under this chapter if ~~such~~ the services are performed for no more than five days in any calendar year and in cooperation with an audiologist or speech-language pathologist ~~licensed under this chapter~~.
8. ~~g.~~ Any person ~~An individual~~ holding a valid credential as a teacher of the hearing-impaired issued by the council on education of the deaf from engaging in the practice of habilitation and rehabilitation of individuals who are hearing-impaired persons.
9. ~~h.~~ Any person ~~An individual~~ possessing a valid certificate as a certified audiometric technician recognized by the state board as meeting council for accreditation in occupational hearing conservation standards appendix II or its equivalent from providing audiometric testing if such service is performed in cooperation with either an audiologist ~~licensed under this chapter~~ or a licensed physician.
10. ~~i.~~ Any person ~~An individual~~ providing hearing screening services as part of a public service project solely intended for the purposes of identification of hearing impairment if such services are performed in cooperation with an audiologist ~~licensed under this chapter~~ who is directly responsible for:
- a. ~~(1)~~ The training of said person ~~this individual~~;
  - b. ~~(2)~~ The administration of hearing screening procedures;
  - c. ~~(3)~~ The interpretation of testing results; and
  - d. ~~(4)~~ Assuring appropriate referral and followup of the identified population.

**SECTION 3. AMENDMENT.** Section 43-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-04. Eligibility for licensure.**

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

1. Be of good moral character.

2. Possess an appropriate degree from an educational institution recognized by the board.
  - a. An applicant for a speech-language pathologist license ~~shall~~must possess at least a master's degree in speech-language pathology.
  - b. An applicant for an audiologist license ~~shall~~must possess at least a doctorate degree in audiology.
  - c. An applicant for a speech-language pathology assistant license must possess at least a bachelor's degree in speech-language pathology or communication disorders.
3. Submit evidence showing qualifications prescribed by rules of the board.
4. ~~Pass an examination approved by the board within~~Within one year of application ~~an applicant for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist must pass any applicable examination prescribed by rules adopted by the board.~~
5. Pay the prescribed fee.

**SECTION 4. AMENDMENT.** Section 43-37-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-04.1. Licensing of out-of-state practitioners.**

1. The board may adopt rules establishing licensure requirements for applicants who hold a current license in good standing to practice as an audiologist ~~or, speech-language pathologist, or speech-language pathology assistant~~ in a state or jurisdiction other than this state and who are not the subject of a pending disciplinary action in any state or jurisdiction.
2. Notwithstanding section 43-37-04, as it relates to the licensure eligibility of an out-of-state audiologist ~~or, speech-language pathologist, or speech-language pathology assistant~~, the board's rules may allow for:
  - a. Waiver of the examination requirement if the applicant meets the requirements established by the board.
  - b. Consideration of education and experience in order to meet the education requirements.

**SECTION 5.** A new section to chapter 43-37 of the North Dakota Century Code is created and enacted as follows:

**Speech-language pathology assistant - Supervising speech-language pathologist.**

A speech-language pathology assistant is licensed by the board to work under the supervision of a speech-language pathologist. A speech-language pathology assistant's scope of practice is limited to tasks the supervising speech-language pathologist delegates. The supervising speech-language pathologist shall assess the speech-language pathology assistant's training and skills in determining which tasks may be delegated. The supervising speech-language pathologist shall limit the

delegated tasks to specific components of a speech and language program as set forth in treatment plans developed by the supervising speech-language pathologist.

**SECTION 6. AMENDMENT.** Section 43-37-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-05. Board of examiners on audiology and speech-language pathology.**

1. The board of examiners on audiology and speech-language pathology is hereby established.
2. The board ~~must be~~is composed of eight members appointed by the governor. Appointees must be residents of this state for at least one year immediately preceding ~~their~~ appointment and, except for the consumer member, must be engaged in rendering services to the public, ~~in~~ teaching, or ~~in~~ research in audiology or speech-language pathology for at least three years preceding ~~their~~ appointment. Two board members must be audiologists, four must be speech-language pathologists, one must be an otolaryngologist, and one must be a consumer.
3. Each board member shall hold office for three years and until a successor is appointed and qualified. The terms must be arranged so ~~that~~ no more than four terms expire on July first of each year. The governor shall fill vacancies for an unexpired term. ~~No person~~An individual may not serve more than two successive terms.
4. The board shall meet at least twice each calendar year. Special meetings may be convened at the call of the chairman or at the written request of any three board members.
5. Five members of the board constitute a quorum. When an application for licensure is received, one member of the quorum must be engaged in the profession for which a license is sought. In the case of an application for licensure as a speech-language pathology assistant, a speech-language pathologist must be a member of the quorum.

**SECTION 7. AMENDMENT.** Section 43-37-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-06. Powers and duties of the board.**

The board may ~~employ persons~~hire employees to assist the board in carrying out ~~its~~the board's duties under this chapter and may adopt rules for:

1. ~~Licensing~~Annual licensure.
2. Licensing fees not to exceed one hundred dollars per year.
3. Ethical standards of conduct.
4. Continuing competency and education.
5. License suspension or revocation.
6. Carrying out the purposes of this chapter.

**SECTION 8. AMENDMENT.** Section 43-37-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-08. Compensation of board members.**

Board members ~~shall be entitled to~~ receive compensation per day in the amount provided for members of the legislative management under section 54-35-10 and ~~shall be entitled to~~ be reimbursed for mileage and travel expenses necessarily incurred in the conduct of board business at the same rate as state employees.

**SECTION 9. AMENDMENT.** Section 43-37-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-09. License examination.**

1. A separate examination ~~must be~~ required for licensure in speech-language pathology or audiology. ~~Any person~~An individual may be licensed in both areas if that ~~person~~individual meets the respective qualifications of each area.
2. The speech-language pathology examination and the audiology examination are examinations offered by organizations approved by the board. The board shall maintain proof ~~that all licensees have passed the required examination.~~ The examination is not required for renewal of licenses, ~~except as required by board rules.~~

**SECTION 10. AMENDMENT.** Section 43-37-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-13. ~~Suspension and revocation of license~~Disciplinary actions.**

1. The board may refuse to issue or renew a license, ~~or may suspend, or revoke a license,~~ or take other disciplinary action against a ~~licensee~~licensee if the licensee or applicant for license has engaged in unprofessional conduct. ~~Such unprofessional~~Unprofessional conduct ~~may include~~includes:
  - a. ~~Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.~~
  - b. ~~Engaging in unprofessional conduct, as defined by the rules established~~adopted by the board, or violating the code of ethics adopted ~~and published by the board~~ by rule.
  - c. ~~Conviction~~Being convicted of an offense if the acts for which that ~~person~~individual is convicted are determined by the board to have a direct bearing on ~~such~~that applicant's or licensee's ability to serve the public in the capacity of a speech-language pathologist, speech-language pathology assistant, or audiologist; or the board determines that ~~such~~ applicant or licensee, following conviction of any other offense, is not sufficiently rehabilitated under section 12.1-33-02.1.
  - d. ~~Violation of any~~Violating an order or rule adopted by the board.
  - e. ~~Violation of~~Violating this chapter.
  - f. Receiving remuneration of any kind from the sale of any type of hearing aid, unless licensed under chapter 43-33.

2. One year from the date of revocation of a license, the licensee may make application to the board for reinstatement. The board may accept or reject an application for reinstatement or may require an examination for reinstatement.

**SECTION 11. AMENDMENT.** Section 43-37-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-37-18. Penalty.**

Any person ~~wh~~that violates this chapter is guilty of a class A misdemeanor.

**SECTION 12. REPEAL.** Section 43-37-01 of the North Dakota Century Code is repealed.

**SECTION 13. EFFECTIVE DATE.** This Act becomes effective January 1, 2018.

Approved March 21, 2017

Filed March 22, 2017

## CHAPTER 301

### SENATE BILL NO. 2141

(Senator Anderson)  
(Representative Blum)

AN ACT to amend and reenact sections 43-32-01, 43-32-02, 43-32-05, 43-32-06.1, 43-32-07, 43-32-08.1, 43-32-12, 43-32-13, 43-32-14, 43-32-16, 42-32-17, 43-32-19.1, 43-32-20, 43-32-20.1, 43-32-24, 43-32-26, 43-32-27, 43-32-27.1, and 43-32-30 of the North Dakota Century Code, relating to regulation by the state board of psychologist examiners; and to repeal sections 43-32-33 and 43-32-34 of the North Dakota Century Code, relating to applied behavior analysis.

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

**SECTION 1. AMENDMENT.** Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-32-01. Definitions.**

1. "Applied behavior analyst" means an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst.
2. ~~"Autism spectrum disorder" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.~~
3. "Board" means the North Dakota state board of psychologist examiners.
- 4.3. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.
- 5.4. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.
- 6.5. "Industrial-organizational psychology resident" means an individual who has met the requirement of subdivision b of subsection 2 of section 43-32-20, is involved in supervised employment in industrial-organizational psychology, and has registered with the board.
- 7.6. "Licensee" means an industrial-organizational psychologist, an applied behavior analyst, or a psychologist.
- 8.7. "Practice of applied behavior analysis":

- a. Means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including principles of operant and respondent learning. The term includes applications of those principles, methods, and procedures to:
- (1) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;
  - (2) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals;
  - (3) Design, supervise, evaluate, and modify treatment programs to change the behavior of groups; and
  - (4) Consult with individuals and organizations.
- b. The term does not include diagnosis, counseling, psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, family therapy, coordination of care, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

9-8. "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes providing psychological services to individuals, families, groups, organizations, institutions, and the public regardless of whether payment is received for services rendered. The term includes supervising others who are engaged in the practice of psychology.

10-9. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

11-10. "Psychology resident" means an individual who ~~has met the requirement of subdivision b of subsection 1 of section 43-32-20, is involved~~ is registered by the board and is actively engaged in supervised psychological employment, and has registered with the board practice.

12-11. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst and is supervised by a licensed psychologist or applied behavior analyst. The term does not include an applied behavior analyst.

43-12. "School or college" means any university or other institution of higher learning which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology, psychology, or applied behavior analysis, as appropriate.

**SECTION 2. 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 seven members, all of whom are residents of the state. 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 or applied behavior analysis, and at least one member must be engaged primarily in teaching, training, or research in psychology or applied behavior analysis. Except the public member, each member must:

1. ~~Be a resident of this state.~~
2. ~~Be~~ be licensed under this chapter for at least five years.

**SECTION 3. AMENDMENT.** Section 43-32-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-05. Compensation of members - Expenses of board and members.**

Each member of the board serves without compensation, but is entitled to receive reimbursement for board expenses, mileage, and travel expenses while engaged in the performance of board duties 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.

**SECTION 4. AMENDMENT.** Section 43-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-06.1. Authority to appoint or employ.**

The board may appoint, contract with, or employ persons to assist the board in carrying out its duties under this chapter.

**SECTION 5. AMENDMENT.** Section 43-32-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-07. Meetings of board - ~~Seal of board.~~**

The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the president or at the written request of the governor or of any two members of the board. The meetings must be held at such places as the board may designate. ~~The board must have a seal.~~



**SECTION 6. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08.1. Continuing education requirements.**

The board shall adopt rules establishing requirements for the continuing education of all licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant fails to meet applicable continuing education requirements. ~~Applicants for accreditation~~ Sponsors of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 7. 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. 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 8. 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.**

Annually, the board shall mail or transmit by electronic mail a renewal notice and application to each licensee and registrant at the address or electronic mail address on file with the board. Before November fifteenth of each year, every licensee and registrant shall apply for renewal on a renewal application form provided by the board and pay to the secretary of the board an annual fee determined by the board by rule. The Upon confirmation by the board the renewal application is complete, the criteria for renewal have been met, and the secretary of the board; ~~upon receipt of~~ has received payment of the annual fee, the secretary 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 9. 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~~ an individual's license or registration issued under this chapter ~~has expired~~ expires for failure to pay the annual fee ~~must be reinstated, the board shall reinstate that individual and renew the license or registration renewed if,~~ within one year from the date of 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 established by the board by rule and demonstrates all continuing education

requirements have been met or the board has granted an extension of the period in which to meet the continuing education requirements.

**SECTION 10. AMENDMENT.** Section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-16. Board to keep records.**

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, agedate of birth, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.
2. Except as otherwise provided by law, the records of the board are public records and evidence of the proceedings of the board, and a transcript of board proceedings, duly certified by the secretary of the board, ~~bearing the seal of the board~~, is admissible in evidence with the same effect as if the original were produced.

**SECTION 11. 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~~, licensee 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 "licensed 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 12. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Expedited licensure - Licensing or registering applicants licensed or registered in other jurisdictions.**

1. The board may grant a license or registration to an applicant who is an individual licensed, certified, or registered in good standing in another jurisdiction that imposes requirements for licensure or registration and who files a completed application on a form and in a manner the board prescribed, submits the required fee, and submits documentation:
  - a. Meets standards established by the board Confirming graduation from an accredited program in the degree of licensure or registration for which the individual is applying in this state; or
  - b. Is 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 Confirming completion of a national examination required by the board related to competence in psychology or applied behavior analysis;
  - c. Identifying all professional licenses, certifications, or registrations previously obtained by the applicant in any jurisdiction;
  - d. Explaining any professional or personal conduct that reasonably may be interpreted as indicating an inability to adhere to this chapter, including the code of ethical conduct adopted by the board; and
  - e. Providing the board with a release by which the board may obtain from the applicant's current jurisdiction, confirmation of the educational degree the applicant's licensure or registration required, documentation of any disciplinary action related to the applicant's license or registration, and an explanation of all levels in the applicant's profession the current jurisdiction licenses or registers.
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 ethics, 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 may grant a provisional license or registration to an expedited licensure applicant while the application is pending, ~~if the applicant is licensed or registered and is in good standing in another jurisdiction or is. The board may grant a provisional registration to an individual who is applying for registration as an applied behavior analyst if the individual is certified by a professional organization that is identified by the board by rule. The board may not grant, deny or place restrictions on 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~~may 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 13. 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~~may issue a license or registration to each applicant who files ~~an~~a completed application upon a form and in a manner the board prescribes, submits the required fee, and meets the requirements of subsection 1 ~~or, 2, or 3.~~

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~~ ethical conduct adopted by the board by rule.
  - b. The applicant has received, from a school or college, a doctorate degree in a 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~~ ethical 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 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.
3. An applicant for licensure as an applied behavior analyst or registration as a registered applied behavior analyst shall:
- a. Submit written documentation confirming the applicant will adhere to the code of ethical conduct adopted by the board by rule.
  - b. Demonstrate the applicant meets board-approved education requirements adopted by the board by rule.
  - c. Demonstrate the applicant passed examinations demonstrating professional competence adopted by the board by rule.
  - d. Provide documentation indicating the applicant has established supervision requirements as determined by the board by rule. The board's rule must allow for supervision of board certified behavioral analysts by professionals with equivalent or greater training.

**SECTION 14. 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.**

1. This section applies to postdoctoral supervised employment in the practice of psychology and industrial-organizational psychology.
2. 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.
3. Supervision must occur weekly and consist of at least one hundred hours of direct supervision, either face-to-face or through distance communications. 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 supervision for individuals preparing for licensure on a part-time basis.

4. a. An applicant seeking registration as a resident shall submit the following to the board:
    - (1) A supervision relationship form;
    - (2) An application initiation form and fee; and
    - (3) A completed online licensure application.
  - b. The board shall register an applicant as a resident if the documentation submitted by the applicant confirms the applicant meets the standards required by law.
  - c. The board shall adopt rules setting forth the requirements necessary to maintain a residency, including rules related to the supervision requirements for residents.
5. The board may adopt rules regarding postdoctoral psychology and industrial-organizational psychology supervision requirements and reporting.

**SECTION 15. AMENDMENT.** Section 43-32-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-24. Notice to applicant of examination results and right to re-examination.**

~~The board shall state in writing its reason for refusal of a license to any applicant who has been so denied in writing the applicant of the results of the examination. An applicant who fails the examination may be re-examined at a subsequent examination upon again paying the required examination fee.~~

**SECTION 16. 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 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 17. 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 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 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 and~~ the code of ethical conduct adopted by the board by rule.
  - h. Has become grossly negligent in the practice of psychology or 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 shall state in writing the board's reason for denying a license or registration.
  3. The board may assess costs incurred by the board related to investigations and disciplinary actions. By rule, the board may set fees or fines, not to exceed five hundred dollars, for minor infractions of this chapter.
  - ~~3-4.~~ 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.

- 4-5. 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 18. 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 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 allegation and request a written response. The board may establish procedural exceptions for processing multiple allegations from the same person.
2. The board shall determine if the information in an allegation warrants investigation as a complaint, without requiring the 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 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 19. 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 who meets the required supervision and continuing education requirements and demonstrates competency in the area of the student's or intern's practice, 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". The student or intern status and the supervisor must be clearly stated.
2. 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.
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 education standards and practices board.
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.
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.~~
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.
- 7-6. An individual providing applied behavior analysis services to an individual in a public school setting.
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, applied behavior analyst, or psychologist.~~

- ~~9.7.~~ 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.
- ~~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 20. REPEAL.** Sections 43-32-33 and 43-32-34 of the North Dakota Century Code are repealed.

Approved April 10, 2017

Filed April 10, 2017

## CHAPTER 302

### SENATE BILL NO. 2329

(Senators D. Larson, Dever)  
(Representative Dockter)

AN ACT to amend and reenact section 43-30-04 of the North Dakota Century Code, relating to private investigative services by security officers; and to provide for a legislative management study.

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

**SECTION 1. AMENDMENT.** Section 43-30-04 of the North Dakota Century Code is amended and reenacted as follows:

##### **43-30-04. Powers of the board.**

1. The board shall establish by rule the qualifications and procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services, including armed security personnel. The rules adopted under this section addressing qualifications of security officers must recognize active members of the national guard and former members of the national guard, reserve, or regular armed forces of the United States, who were not dishonorably discharged, as having met any related experience requirements. All rules adopted by the board and appeals therefrom must be in accordance with chapter 28-32.
2. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

**SECTION 2. LEGISLATIVE MANAGEMENT STUDY - PRIVATE INVESTIGATIVE AND SECURITY SERVICES.** During the 2017-18 interim, the legislative management shall consider studying the feasibility and desirability of updating North Dakota Century Code chapter 43-30, the law relating to the regulation of private investigative and security services. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 7, 2017

Filed April 7, 2017

## CHAPTER 303

### SENATE BILL NO. 2092

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

AN ACT to amend and reenact sections 43-25-02 and 43-25-05, subsection 3 of section 43-25-05.1, and sections 43-25-07, 43-25-08, 43-25-09, 43-25-13, and 43-25-18 of the North Dakota Century Code, relating to the licensing and regulation of massage therapy.

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

**SECTION 1. AMENDMENT.** Section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-25-02. Definitions.**

1. "Board" means the North Dakota board of massage therapy.
2. a. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, using western and eastern modalities, including superficial hot and cold applications, hydrotherapy, reflexology, shiatsu, acupressure, and the use of salts or lubricants for the purpose of promoting, maintaining, and restoring the health and well-being of the client. The term includes assessment, effleurage (stroking or gliding), petrissage (kneading), tapotement (percussion), compression, vibration, friction, and active or passive range of motion and stretching either by hand, forearm, elbow, knee, foot, or with mechanical appliances for the purpose of body massage practice of massage therapy by the manual application of a system of structured touch to the soft tissues of the human body, including:
  - (1) Assessment, evaluation, or treatment;
  - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration;
  - (3) Active or passive stretching of the body within the normal anatomical range of movement;
  - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human hands;
  - (5) Use of topical applications such as lubricants, scrubs, or herbal preparations; and
  - (6) Use of hot or cold applications.
- b. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy,

or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.

3. "Massage establishment" means any place of business in which massage is practiced.
4. "Massage therapist" means an individual ~~who practices~~licensed to practice massage.
5. "Remote education" means asynchronous education that is not in person, live, or presented in real time.

**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 therapy - Terms.**

1. The governor shall appoint a board of massage, to consist of five members.
  - a. Three 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 and have done so 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.
  - b. One member of the board must be 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, staggered so that the term expires with a licensed board member but not with the instructor board member.
  - c. One member of the board must be ~~an~~ a current or former massage therapy instructor at a school of a massage therapy program 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~~three 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, secretary, and ~~secretary-treasurer~~treasurer. The ~~secretary-treasurer~~treasurer must be bonded in the sum of ~~one~~at least fifty thousand dollars for the faithful discharge of the ~~secretary-treasurer's~~treasurer's duties.

3. Each member of the board must be a citizen of North Dakota and the United States.

**SECTION 3. AMENDMENT.** Subsection 3 of section 43-25-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The ~~secretary-treasurer~~board shall prepare and submit to the governor a biennial report detailing income and expenses and a list of licensed massage therapists.

**SECTION 4. AMENDMENT.** Section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 5. AMENDMENT.** Section 43-25-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-08. Fee for license.**

The application fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

**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 twenty-four~~Except as otherwise provided under this subsection, twenty-four hours of continuing education hours, or equivalent college credits, submitted every two years is ~~a further requirement~~required for renewal of the license. Of the twenty-four hours, twelve hours must be classroom, hands-on hours. 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. If an applicant for renewal is in good standing and has been actively practicing massage for the fifteen years immediately preceding the renewal, six hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. If an applicant for renewal is in good standing and has been actively practicing massage for the twenty-five years immediately preceding the renewal, three hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. The board may accept continuing education attained by remote means. No more than ~~nineteen~~ 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 as defined in this chapter.
  - a. ~~Odd-numbered licensed individuals~~Licensees with odd-numbered licenses shall report required continuing education ~~in or before February twenty-eighth of each odd-numbered year and even-numbered licensed individuals shall report continuing education in even-numbered years, based on the calendar year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.~~
  - b. Licensees with even-numbered licenses shall report required continuing education on or before February twenty-eighth of each even-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
  - b.c. Licensed individuals during their initial licensure period are not required to report hours of continuing education. Thereafter, the licensees shall report continuing education pursuant to ~~subdivisions~~subdivisions a and b.
  - e.d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
- 4.3. If the board reasonably believes a massage therapist or applicant has a physical or mental condition jeopardizing the health of those who seek ~~relief~~massage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. If the individual has had or has any communicable disease deemed 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.

- ~~5-4.~~ A holder of an expired license may within ~~one year~~two years 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 completion of any required continued educational hours being completed.~~
- ~~6-5.~~ All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".
- ~~6.~~ An applicant with training and credentials outside of the United States must submit at the applicant's own expense qualifications, credentials, and work experience to one of the following credentialing agencies for review:
- ~~a.~~ International education research foundation;
  - ~~b.~~ International consultants of Delaware, inc.; or
  - ~~c.~~ A credentialing agency approved by the board.
- ~~7.~~ Failure to have a review completed by a credentialing agency under subsection 6 and the massage therapy application procedures indemnified by the board may result in the board denying the application. The board may accept or refuse any recommendation made by the credentialing agency.

**SECTION 7. AMENDMENT.** Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-25-13. Records to be kept by the ~~secretary-treasurer of the board.~~**

~~The secretary-treasurer of the board shall keep a record of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record.~~board may implement rules for record retention. Licensee information is retained by the board from the date a license is granted until five years after inactive status. Any official entry or a certificate of the absence of information, certified under the hand of the ~~secretary-treasurer~~secretary and the seal of the board, must be admitted as evidence in any of the courts of this state. The ~~secretary-treasurer~~secretary shall furnish to any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied.

**SECTION 8. AMENDMENT.** Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

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

- ~~1.~~ Any individual who has been duly licensed and ~~is in good standing in another state, territory, or jurisdiction of the United States,~~ 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 licensed, certifying to the fact of licensure and being 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., if the applicant provides evidence satisfactory to the board the applicant:~~
  - a. Is licensed in good standing in any other state, territory, or jurisdiction of the United States;
  - b. Actively practiced for at least two of the last three years;
  - c. Graduated from a school of massage or massage therapy program approved by the board which may be proven by presentation of a diploma or credentials;
  - d. Passed an examination acceptable to the board;
  - e. A massage license granted to the applicant in any other state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and
2. To qualify for licensure under this section, an applicant shall submit to a statewide and nationwide criminal history record check as required by section 43-25-08.1.

Approved March 9, 2017

Filed March 9, 2017

## CHAPTER 304

### SENATE BILL NO. 2095

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

AN ACT to amend and reenact sections 43-11-21 and 43-11-25 of the North Dakota Century Code, relating to licensure and reciprocity of cosmetologists, manicurists, and estheticians.

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

**SECTION 1. AMENDMENT.** Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-11-21. Cosmetologist license - Examination required - Application - Examination - Fees.**

Each person who desires to secure a cosmetologist license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by all of the following:

1. ~~Satisfactory proof of the educational qualifications required of a student.~~
2. An examination fee as may be fixed by the board pursuant to section 43-11-28.
- 3-2. Satisfactory proof that the applicant has completed the required training in a school of cosmetology.
- 4-3. A fee for original licensure as required by section 43-11-28.

**SECTION 2. 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:
  - 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; or

c. Provided satisfactory proof:

- (1) The applicant is licensed in good standing in other state, territory, or jurisdiction of the United States to practice cosmetology, manicuring, or esthetics;
  - (2) The applicant worked in the licensed profession for at least three of the past five years;
  - (3) The applicant graduated from a school of cosmetology, manicuring, or esthetics approved by the board which may be established by presentation of a diploma, transcript, or verification from the original licensing state, territory, or jurisdiction;
  - (4) The applicant passed a theoretical and practical examination acceptable to the board; and
  - (5) A license granted to the applicant in any other state, territory, or jurisdiction is not subject to suspension or revocation, or otherwise restricted in any manner for disciplinary purposes.
2. The applicant passes to the satisfaction of the board an examination on sanitary practices and cosmetology law in this state.

Approved March 9, 2017

Filed March 9, 2017

## CHAPTER 305

### SENATE BILL NO. 2310

(Senators Kannianen, Burckhard, Campbell)  
(Representatives Rick C. Becker, Jones, B. Koppelman)

AN ACT to amend and reenact section 43-09-05 of the North Dakota Century Code, relating to inspections of electrical wiring installations.

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

**SECTION 1. AMENDMENT.** Section 43-09-05 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-09-05. Powers and duties of state electrical board - Biennial report.**

The board shall adopt a seal and may adopt reasonable rules to carry out this chapter. The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The board shall appoint qualified inspectors. ~~The inspectors shall inspect, within fifteen days after~~ Upon receipt of notice of completion of any electrical wiring installation involving a value of ~~three~~ five hundred dollars or more in municipalities having ordinances requiring such inspection, ~~the inspectors shall inspect~~ the electrical installation and approve or condemn ~~the same~~ that installation. The inspector shall make a report of the inspection on forms prescribed by the board.

Approved March 14, 2017

Filed March 15, 2017

**CHAPTER 306****SENATE BILL NO. 2120**

(Political Subdivisions Committee)  
(At the request of the Secretary of State)

AN ACT to amend and reenact subsection 4 of section 43-07-01 of the North Dakota Century Code, relating to the definition for public contracts.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 43-07-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of ~~two~~four thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in ~~such~~the subcontract exceeds the sum of ~~two~~four thousand dollars.

Approved March 14, 2017

Filed March 15, 2017