

**2019 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2323**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2323  
1/29/2019  
Job #31636

- Subcommittee  
 Conference Committee

Committee Clerk: Amy Crane

### Explanation or reason for introduction of bill/resolution:

Relating to optometry licenses; and to the state board of optometry.

### Minutes:

Att. #1-3

**Chairman Klein:** Opened the hearing on SB 2323. A quorum was present.

**Senator Oban, District 35:** See attachment #1 for testimony in support of the bill.

**Dr. Taya Patsman:** See attachment #2 for testimony in support of the bill.

**Chairman Klein:** The whole point is to streamline the process, relating to continuing ed? Trying to write it in statute instead of code?

**Taya:** Correct, the last time our statute was updated was in 1993, and there have been significant changes in our profession since then one is our continuing education requirements, our neighboring states have a two-year cycle and we currently have a three-year cycle, and we're looking at aligning ourselves with that two year cycle, and 20 hours of education like they have as well. It's a lot easier for our licensees that have dual licenses on our border states.

**Chairman Klein:** That seems to be such a hot issue right now, how do we sit with those border state reciprocities?

**Taya:** We do have reciprocity, so to become a licensed optometrist in North Dakota you have to pass the national board exams, which typically you do before you graduate from optometry school. And then in North Dakota we have a 20 question true/false test about our law, it can be taken online and it is open book. So once you've fulfilled those requirements, we issue a license.

**Chairman Klein:** It doesn't sound extremely difficult, any fee changes?

**Taya:** Right it's not very restrictive. No fee changes, we did it in our policy several years ago, we increased our fees to incorporate our OE tracking system, which is an online tracker system for continuing education. So doctors after they have complete the CE they upload it

to the site, its online and it has allowed our state board to do an all-state audit of all CE every year, instead of just 10%.

**Senator Piepkorn:** You said there is no fee change so what is the fee cost?

**Taya:** North Dakota license is \$200 per year.

**Brian Beattie, local optometrist, North Dakota State Board of Optometry:** see attachment #3 for testimony in support of the bill.

**Senator Kreun:** You know we're working with the licensing in different states to make it more compatible, this seems to be doing that, and you had a pretty good reciprocity agreement with other states already, this actually enhances that. With the hours are they increased to match the other neighboring states?

**Brian:** Yes, it's gonna be easier cause we're going to be on a two-year cycle, I think there's three states right now on a three-year cycle. But the vast majority use a two-year cycle so it'll be more similar to theirs. And our education requirement is actually gonna go up by three hours per year.

**Senator Kreun:** Maybe the military people won't have optometrists coming back in but the doctors do that's part of the reason they won't come to parts of the country, is that their spouses do not have the ability. I appreciate this coming back with helping and perform these professional services.

**Chairman Klein:** I think I heard you say we have a little higher standard than other states, what did you mean by that? How would our standard be higher, where would the difference be?

**Brian:** We are probably in the middle of the road as far as our ability to practice. There are some states that allow optometrists to perform laser treatments where we are not, there are some states that don't allow to treat glaucoma but we are. We are more advanced than some states but also less than others.

**Chairman Klein:** So even if you traveled to another state, you would have a number of issues rather than being able to go practice right away?

**Brian:** Correct. I would assume so. From a historical perspective North Dakota is one of the highest optometrists per capita. In 25 years, we've never refused anybody a license, we're not very restrictive. Actually we have a ridiculous number of students going to optometry schools, the statistic from the school in Oregon that serves this area was, of the 85 class members, 14 had a connection to North Dakota. Part of what we're doing is supplying a lot of optometrists to the country and world, and some of them even come back.

**Senator Piepkorn:** Where is the testing done?

**Brian:** The written testing is done at each optometry school and the practical is at the National Board of Examiners Headquarters in North Carolina in the summer.

**Chairman Klein:** Where do you have to go to school for optometry?

**Brian:** Oregon, Chicago, Ohio state, Michigan, Arizona, California Indiana also has one. So upper Midwest for the North Dakota students.

**Chairman Klein:** They were out of state tuition for us? There's no reciprocity for that?

**Brian:** There is the WICHE program and we're a part of that.

**Nancy Kopp, Executive Director North Dakota Optometric Association:** testified in support of the bill. For a portion of SB 2323 that references the continuing education requirements, the NDOA would support striking the statute language in reference as has been spoken, from a three-year CE cycle, perhaps through administrative rules can better mirror our neighboring states. Particularly Minnesota. We do have a number of dual licenses meaning they practice in North Dakota but hold a license in Minnesota also. I will not comment regarding the first section of the bill nor the section regarding disciplinary powers of the state board. The average number of hours per year nationally we believe is 18.7 for CE cycles. Dr. Beatie's numbers were pretty accurate. Regarding the CE cycles in other states, our records indicate that 28 states have a 2-year cycle, 3 state have a 3-year cycle, and 20 states have a one-year cycle. Just want to reiterate that South Dakota is on a three-year cycle. So with that, I would consider you to consider passage of 2323, we do believe we can work with the state board of optometry as the promulgate the administrative rules in the future to address these needs. I forgot to mention, you addressed reciprocity in these other bills, the state board of optometry's administrative rules address reciprocity as licensure by endorsement so you might or might not hear that endorsement is comparable to reciprocity.

**Chairman Klein:** Closed the hearing on SB 2323

**Vice Chairman Vedaa: Moved Do Pass.**

**Senator Kreun: Seconded.**

**A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent.**

**Motion Carried.**

**Vice Chairman Vedaa will carry the bill.**



**REPORT OF STANDING COMMITTEE**

**SB 2323: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2323 was placed on the Eleventh order on the calendar.

**2019 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2323**

# 2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2323  
3/6/2019  
33344

- Subcommittee  
 Conference Committee

Committee Clerk: Ellen LeTang

## Explanation or reason for introduction of bill/resolution:

Foreclosure of real estate.

## Minutes:

Attachment 1, 2, 3

**Chairman Keiser:** Opens the hearing on SB 2323.

**Sen Erin Oban~District 35:** Attachment 1.

**3:25**

**Rep Laning:** Is the request from the board?

**Sen Oban:** Yes.

**Dr Brian Beattie~Eyes on Parkway:** Attachment 2.

**6:20**

**Chairman Keiser:** Is this continuing hours comparably with other states & won't affect reciprocity?

**Dr Beattie:** It shouldn't, it should be easy to get reciprocity.

**Rep Schauer:** Tell me about the national organization that does the testing.

**Dr Beattie:** Explains.

**Rep Schauer:** Is the continuing hours on line or conferences?

**Dr Beattie:** Both.

**Rep Schauer:** How do I know when it's completed, who is the controlling authority?

**Dr Beattie:** There is a log kept by the administrator present to grant the hours & then that is sent on to the national certifying organization.

**Rep Louser:** Is there minimum hours per block?

**Dr Beattie:** It's at the end of two years to complete the hours.

**Rep Louser:** Can you do it on line?

**Dr Beattie:** You can.

**Rep Kasper:** On page 5, do you know the repealing sections are?

**Dr Beattie:** I do not.

**Rep D Ruby:** The repealed section deals with the enforcement, license. Are you moving all of that into administrative rules?

**Dr Beattie:** Yes but there are some that are redundant & doesn't apply anymore.

**Rep D Ruby:** The administrative rules that you plan will be in place when this bill goes into effect?

**Dr Beattie:** No, I think the soonest would be next fall.

**Chairman Keiser:** That would be in the fall, that's correct.

**Rep D Ruby:** This will go into effect August 1 or later?

**Dr Beattie:** I'm not sure of all the procedures, it will get done in administrative law.

**Chairman Keiser:** The language of repeals gives information by the person being affected, that all going to be set in administrative rules?

**Dave Schaible~Assistant Attorney General for the Board of Optometry:** Sections that they are repealing, relate to a lot of detail about what they have to do to revoke a license & the hearing process. The board will be using that process in handling the appeals.

**Nancy Kopp~Executive Director for the ND Optometric Association:** Attachment 3.

**18:00**

**Chairman Keiser:** I understand that the board can receive a complaint that someone might file against a member. That complaint can be researched by the board but if we are to prosecute or take action, it would be turned over to an administrative law's judge to make a determination based on the fact?

**Dave Schaible:** It is.

**Chairman Keiser:** One of the problems in administrative process is the length of time. I do have a concern for the public for a bad actor. Is that correct?

**Dave Schaible:** My experience, it's been an expedient process.

**Chairman Keiser:** Even if it's 2 months, do we want a bad actor working with the public? Shouldn't there be something in here to take some action from the board?

**Dave Schaible:** The board that I know of that has that authority to freeze a practitioner are allowed through an order.

**Chairman Keiser:** I think the legal group can do it as well. If it's such an inconsequential thing that we don't need to protect the public by giving the board authority?

**Dave Schaible:** I would help them interpret the laws that pass as the board's attorney.

**Chairman Keiser:** Brian, do you have any thoughts?

**Dr Beattie:** The board would act in the best interest of the public & make it expedient.

**Chairman Keiser:** I can tell you they have to get the assignment, be available, have to do discovery & they have to start looking for a medical opinion, they can delay this process a long time.

**Chairman Keiser:** Anyone else here to testify on SB 2323 in support, opposition, neutral position? Closes the hearing. What are the wishes of the committee?

**Chairman Keiser:** I'm would like to think about this for a while.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2323  
3/13/2019  
33664

- Subcommittee  
 Conference Committee

Committee Clerk: Ellen LeTang

### Explanation or reason for introduction of bill/resolution:

State board of optometry.

### Minutes:

Attachment 1

**Chairman Keiser:** Reopens the hearing on SB 2323. The board had a special meeting on March 11 at 6 pm & discussed the issue we raised. This is going to take regulatory action to the ALJ process & they make the decision & recommendation to the board. I was concerned about the emergency. You have the letter before you. There are 2 minor items. **(Attachment 1)**

1:45

**Rep Schauer:** Who's the responsible for the liability of a bad actor legally?

**Chairman Keiser:** Any professional practicing with have to have malpractice or liability insurance. These boards are extensions of the state of ND. They have the title of assistant to the Attorney General behind it. If there is a lawsuit, the board will pay the ALJ fees for any court. They don't have a problem & they have adequate reserves.

**Rep Laning:** Do they want it passed or killed?

**Chairman Keiser:** They want it passed, they want to modernize it. They are doing something in the bill already. What are the wishes of the committee?

**Vice Chairman Lefor:** Moves a Do Pass.

**Rep Laning:** Second.

**Chairman Keiser:** Further discussion?

**Roll call was taken on SB 2323 for a Do Pass with 13 yes, 0 no, 1 absent & the carrier is Rep P Anderson.**

Date: Mar 13, 2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2323

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or  
Description: \_\_\_\_\_

**Recommendation**

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

**Other Actions**

- Reconsider
- \_\_\_\_\_

Motion Made by Rep Lefor                      Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	Ab	
Vice Chairman Lefor	x		Rep Richter	x	
Rep Bosch	x		Rep D Ruby	x	
Rep C Johnson	x		Rep Schauer	x	
Rep Kasper	x		Rep Adams	x	
Rep Laning	x		Rep P Anderson	x	
Rep Louser	x		Rep M Nelson	x	

Total (Yes) 13                      No 0

Absent 1

Floor Assignment Rep P Anderson

**REPORT OF STANDING COMMITTEE**

**SB 2323: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
SB 2323 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2323**

SB 2323 1/29/19 Alt #1 v.1

# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Senator Erin Oban

District 35  
1319 Apache Street  
Bismarck, ND 58501-2632

C: 701-955-3188  
eoban@nd.gov

## COMMITTEES:

Education  
Government and Veterans Affairs

### SB 2323

Senate Industry, Business, and Labor Committee

Hearing: January 29, 2019 | 9:45 am

Mr. Chairman, members of the Committee, for the record, Erin Oban, Senator for Bismarck's District 35. I'm here to introduce SB 2323 to do a little housekeeping within ND CC Chapter 43-13 regarding Optometry.

The bill does a couple of things that I will summarize:

- Section 1 and 2 provides a lot of technical corrections, but any substance that is being overstruck regarding failure to pass an exam, specific continuing ed requirements, extensions, etc. are being moved from NDCC to Admin Rules, similar to other professional licensing board practice.
- One change they will be making in Admin Rules vs. what is currently in NDCC is a reduction in those continuing ed hours from the current 50 hours every 3 years to be more aligned with the national average of 20 hours.
- Sections 3, 4, and 5 provide more clear direction for investigations, hearings, and disciplinary actions to align with the administrative hearing process in ND CC 28-32.
- Section 6 repeals language that will now be more succinctly covered in the previous sections or that is no longer needed. I have provided a copy of the text of those sections proposed to be repealed.

Mr. Chairman, I am not an optometrist, I don't play one on TV, but I do see mine once a year as advised (as should you). Luckily, there are professionals here who can help answer questions or provide further background regarding how and why these changes are being suggested.

**SB 2323 - Section 6 repeals:****43-13-23. Revocation of license - Notice.**

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

**43-13-24. Revocation of license - Hearing - Procedure - Witnesses - Expenses.** At the hearing of the charges against the holder of a license to practice optometry in this state, the secretary of the board shall read the charges to the accused, if present, and the accused shall state whether guilty or not guilty thereof. If the accused denies the charges, evidence must be received by the board from competent witnesses under oath as to their truth. The accused may examine the witnesses or have an attorney present, and may produce evidence in the accused's behalf. The board may compel the production of testimony and the attendance of witnesses from any point within the state and may employ an attorney to represent it. All expenses incurred in conducting the hearing must be paid by the secretary on order of the board out of the funds in the board's custody.

**43-13-25. Determination of board constitutes revocation of license.** The board shall review the evidence at the conclusion of the hearing of charges against the holder of a license to practice optometry in the state, and shall enter upon its records a determination as to whether the accused is guilty of one or more of the charges. If the accused is found guilty, the determination as recorded constitutes a revocation or suspension of the license as determined by the board. If the accused fails to appear at the hearing or if the accused pleads guilty to one or more of the charges, the secretary shall enter that fact upon the records of the board. Such record constitutes a determination of guilt and effects the revocation of the license of the accused.

**43-13-26. Revocation of license - Appeal.** Upon the revocation or suspension of any license to practice optometry in this state, the holder, within thirty days, may appeal to the district court of the county within which the accused resides. The appeal must be taken in accordance with chapter 28-32. The secretary of the board shall send the files and a copy of the minutes of the proceedings of the board in said matter to the clerk of the district court to which the appeal is taken, and such minutes and files constitute the record on appeal.

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

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

SB 2323 1/29/19 Att#2

**Senate Bill 2323**

**Industry, Business, and Labor Committee**

**January 29, 2019**

Good Morning Mr. Chairman and members of the committee. My name is Dr. Taya Patzman and I'm a member of the State Board of Optometry. I am speaking to you today on behalf of Dr. Jeff Yunker, President of the State Board of Optometry. He is attending a national meeting and is not able to attend, so I will be reading his testimony and will be available for questions following.

I appear before you today to explain the purpose of Senate Bill 2323. Before I begin, I would like to thank Senators Oban, Davison, and Meyer for sponsoring our bill. It was the consensus of the Optometry Board that this bill, if passed, will accomplish the following:

1. Enable the Board to change continuing education requirements by Administrative Rule. North Dakota's current continuing education requirements are less than the national average. Continuing education and the ability of the Board to perform office inspections gives the Board a mechanism of ensuring maintenance of competence which in turn protects the public.
2. Give the Board the ability to utilize disciplinary hearings. The present optometric statutes were written before the state set up the Office of Disciplinary Hearings.

Thank you for your time and consideration of SB 2323. I would be happy to answer any questions or concerns you that you may have at this time.

Dr. Jeff Yunker, President of the State Board of Optometry

SB2323 1/29/19 AH#3

SB2323

Dr. Brian Beattie  
Eyes on Parkway  
Bismarck  
701 391 7532  
[bcbeattiend@gmail.com](mailto:bcbeattiend@gmail.com)

Mr. Chairman and committee members. I am a practicing optometrist here in Bismarck and serve as a member of the North Dakota State Board of Optometry. The bill before you changes to the law governing practice of optometry.

43-13-19 The language is changed from shall license to must license and it strikes the re-examination timing and reduced fee. The language being struck has to do with retesting. The testing is now done through a national testing organization so they control the fees and timing of the tests.

43-13-20 The continuing education requirement is spelled out in the law. Even minor changes in these requirements require legislative action. The intent is to have some of these details handled in administrative law. The Board has discussed using a to 2 year cycle with every doctor in the state on the same schedule. That would make it easier to know the beginning and end of each continuing education (C.E.) cycle for North Dakota doctors.

Most of the states use 2 year cycles. Our C.E. hour requirement, 16 2/3 hrs. per year, is less than the average for states with similar practice laws which average 19.5 hrs. per year. The majority of states have a 2 year cycle so it makes it easier for doctors with licenses in multiple states if it is consistent.

We have discussed increasing the required hours to 40 for a 2 year cycle. We have also discussed allowing more of the hours to be completed online.

We are striking language about proof of education which is now available to our executive secretary online and, also available to our doctors online. The required C.E courses are approved by a national organization.

43-13-21

This section is being amended to reflect the recommendations of the Attorney General's office on how to best handle discipline. There are privacy issues along with open meeting laws as well as the need to protect and inform the public.

This law predates the Office of Administrative Hearings which will now be a part of the Board disciplinary procedures.



# NORTH DAKOTA SENATE

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Senator Erin Oban

District 35  
1319 Apache Street  
Bismarck, ND 58501-2632  
C: 701-955-3188  
eoban@nd.gov

## COMMITTEES:

Education  
Government and Veterans Affairs

Attachment 1

### SB 2323

House Industry, Business, and Labor Committee

Hearing: March 6, 2019 | 2:00 pm

Mr. Chairman, members of the Committee, for the record, Erin Oban, Senator for Bismarck's District 35. I'm here to introduce SB 2323 to do a little housekeeping within NDCC Chapter 43-13 regarding Optometry.

The bill does a couple of things that I will summarize:

- Section 1 and 2 provides a lot of technical corrections, but any substance that is being overstruck regarding failure to pass an exam, specific continuing ed requirements, extensions, etc. are being moved from NDCC to Admin Rules, similar to other professional licensing board practice.
- One change they will be making in Admin Rules vs. what is currently in NDCC is a reduction in those continuing ed hours from the current 50 hours every 3 years to be more aligned with the national average of 20 hours.
- Sections 3, 4, and 5 provide more clear direction for investigations, hearings, and disciplinary actions to align with the administrative hearing process in ND CC 28-32.
- Section 6 repeals language that will now be more succinctly covered in the previous sections or that is no longer needed. I have provided a copy of the text of those sections proposed to be repealed.

Mr. Chairman, I am not an optometrist and won't pretend to be, but I do see mine once a year as advised. Luckily, there are professionals here who can help answer questions or provide further background regarding how and why these changes are being suggested.

Mar 6, 2019

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**43-13-25. Determination of board constitutes revocation of license.** The board shall review the evidence at the conclusion of the hearing of charges against the holder of a license to practice optometry in the state, and shall enter upon its records a determination as to whether the accused is guilty of one or more of the charges. If the accused is found guilty, the determination as recorded constitutes a revocation or suspension of the license as determined by the board. If the accused fails to appear at the hearing or if the accused pleads guilty to one or more of the charges, the secretary shall enter that fact upon the records of the board. Such record constitutes a determination of guilt and effects the revocation of the license of the accused.

**43-13-26. Revocation of license - Appeal.** Upon the revocation or suspension of any license to practice optometry in this state, the holder, within thirty days, may appeal to the district court of the county within which the accused resides. The appeal must be taken in accordance with chapter 28-32. The secretary of the board shall send the files and a copy of the minutes of the proceedings of the board in said matter to the clerk of the district court to which the appeal is taken, and such minutes and files constitute the record on appeal.

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

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

Attachment 2  
Mar 6, 2019

SB2323

Dr. Brian Beattie  
Eyes on Parkway  
Bismarck  
701 391 7532  
[bcbeattiend@gmail.com](mailto:bcbeattiend@gmail.com)

Mr. Chairman and committee members. I am a practicing optometrist here in Bismarck and serve as a member of the North Dakota State Board of Optometry. The bill before you makes several changes to the law governing the practice of optometry. The last time this law was updated was in 1993.

43-13-19 The language is changed from shall license to must license and it strikes the re-examination timing and reduced fee. The language being struck has to do with retesting. The testing is now done through a national testing organization so they control the fees and timing of the tests.

43-13-20 Optometry's continuing education requirement is spelled out in the law. Even minor changes in these requirements require legislative action. The intent is to have some of these details handled in administrative law. The Board has discussed using a 2 year cycle with every doctor in the state on the same schedule. That would make it easier to know the beginning and end of each continuing education (C.E.) cycle for North Dakota doctors.

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This law predates the Office of Administrative Hearings which will now be a part of the Board disciplinary procedures.

**Senate Bill 2323**

**Industry, Business and Labor Committee**

**March 6, 2019**

Good Morning Mr. Chairman and members of the House IBL Committee.

For the record, my name is Nancy Kopp, Executive Director for the North Dakota Optometric Association, which represents approximately 85% of the practicing optometrists in North Dakota.

I appear before you in support of a portion of SB 2323 that references revisions to 43-13-20 of the bill, continuing educational requirements.

The NDOA would support striking the statute language in reference to a 3 year period or CE cycle. This would allow, I'm assuming by implementing by Administrative Rule, the State Board of Optometry, to change a CE cycle that may better suit the needs of some North Dakota licensees that also are licensed in our neighboring state of Minnesota, that require continuing educational requirements on a 2 year cycle, versus North Dakota's 3 year cycle.

I will not comment at this time, as to support of an increase in the number of CE hours, but will support a cycle revision. 20 states have a 1 year cycle, 28 states have a 2 year cycle and 3 states have 3 year cycle (North Dakota, South Dakota and New York).

The average number of continuing educational hours per year nationally, we believe is 18.7

I cannot address the other statute changes to sections of the bill pertaining to license examination or disciplinary powers of the Board.

Thank you in advance for consideration of the NDOA's comments.

I would be happy to answer any questions you may have at this time.

Mar 13, 2019

SB 2323

Attachment 1

March 11, 2019

Dear Representatives Kaiser and Lefor:

The State Board of Optometry conducted a Special Meeting at 6:00 pm on March 11<sup>th</sup> to discuss issues you raised at the House Committee on Industry, Business, and Labor's hearing on SB 2323 that took place on March 6, 2019. Your concerns related to the current disciplinary powers of the Board concerning an incompetent or dangerous practitioner.

For background, in our Special Meeting I informed the Board that in the past 14 years there have only been two optometrists that were investigated for potential harm to the public. Neither was considered an imminent threat. One surrendered their license voluntarily and the other agreed to a five- year remediation plan that included counseling, weekly AA meetings and random quarterly urine and hair analysis. Newer Board members were appreciative of this historical context.

The Board next discussed its current disciplinary process that allows the Board to respond to any complaint by first conducting an investigation and then attempting to negotiate an agreement to remedy the situation. Should this negotiation fail the Board can then file a complaint with the Office of Administrative Hearings ("OAH"). We understand that some state agencies have shared with your Committee that the OAH process is taking over two years for them, but as we understand from our Attorney, decisions by the OAH on licensing matter are usually issued about 60-90 days after the OAH hearings. The Board then discussed the types of wrongdoing our licensees might engage in, which generally do not present an imminent risk of ongoing harm to the public. We also discussed how the OAH process and the time it takes should not present significant risk to the public. Additionally, if a serious threat of imminent harm to the public does exist, the Board also has the option of quickly going to the State Courts and attempt to obtain an injunction from a State Court judge to possibly halt the wrongful conduct.

At the close of the meeting, the Board then voted unanimously that the continued use of an OAH process and the timing of that hearing would be sufficient to protect the public and no changes to our current disciplinary process are needed.

Respectfully submitted,

Jeffery B. Yunker, O.D.  
Chair