

ADMINISTRATIVE RULE EXEMPTION FROM STATUTORY PROVISIONS

North Dakota Administrative Code (NDAC) Section 96-02-10-01, reviewed by the Administrative Rules Committee at the March 2012 committee meeting, provides an exemption from North Dakota Century Code (NDCC) Chapter 43-48 for an individual performing designated tests under the supervision of an individual licensed by the North Dakota Board of Clinical Laboratory Personnel. The committee raised the question of whether it is appropriate for an administrative rule to create exemptions from statutory provisions.

Under ordinary circumstances, an administrative rule may not supersede a statutory provision (*Medical Properties, Inc. v. North Dakota Board of Pharmacy,*

80 N.W.2d 87 (N.D. 1956)) and, therefore, an administrative rule cannot create an exemption from a statutory provision. However, NDCC Section 43-48-03 provides in subsection 9 an exemption from coverage by the chapter for 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." This statutory provision allows the board to identify tests and methods exempt from the statutory prohibitions of NDCC Chapter 43-48 when the individual performing the designated tests is supervised by a licensed individual. Under these circumstances the rule implements, rather than supersedes, the statutory provision.