

OCCUPATIONS AND PROFESSIONS

CHAPTER 363

HOUSE BILL NO. 1210

(Representatives Tollefson, Soukup, Thoreson, Coats)
(Senator Redlin)

BARBER FEES AND CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-04 of the North Dakota Century Code, relating to continuing education of barbers; and to amend and reenact sections 43-04-07 and 43-04-42 of the North Dakota Century Code, relating to the state board of barber examiners and fees.

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

SECTION 2. AMENDMENT. Section 43-04-42 of the North Dakota Century Code is amended and reenacted as follows:

43-04-42. Fees. ~~The fees to be paid by an applicant are as follows~~

1. The board may charge applicants the following fees:
4. a. For examination ~~for~~ and issuance of a certificate to practice master barbering, ~~twenty~~ one hundred dollars.
2. ~~For issuance of such certificate, two dollars.~~
3. b. For examination ~~for~~ and issuance of a certificate to practice as an apprentice barber, ~~ten~~ fifty dollars.
4. ~~For issuance of such certificate, two dollars.~~
5. c. For renewal of a master barber's certificate, ~~thirty-five~~ fifty dollars.
6. d. For restoration of an expired master barber's certificate, a ten dollar penalty fee in addition to the regular renewal fee.
7. e. For renewal of an apprentice barber's certificate, twenty dollars.

8. f. For restoration of an expired apprentice barber's certificate, a ten dollar penalty fee in addition to the regular renewal fee.
9. g. For a permit to operate a barber school or college, an annual fee of one hundred twenty-five dollars.
10. h. For issuance of an annual barbershop license, ~~fifteen~~ thirty-five dollars, to be paid by each shopowner in advance.
11. i. For issuance of a certificate to an applicant who qualifies under section 43-04-38.1, one hundred twenty-five dollars.
12. j. For restoration of an expired barbershop license, a ten dollar penalty fee in addition to the annual license fee.
2. Each application to open or establish a barbershop in this state must be accompanied by a fee of fifty 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 ~~will~~ must be issued upon the filing of:
- Filing a statement covering verified by the oath of the applicant which explains the loss of the same, verified by the oath of the applicant, and submitting;
 - Submitting a signed photograph of the applicant; and the payment of
 - Paying a fee of fifty cents ten dollars for the issuance of the duplicate. The board has the power to reduce renewal fees below the amounts heretofore set out in this section whenever the board determines that the full amount is not necessary to finance the necessary and regular operations of the board. Such reduction must be made by the board only by applying an equal percentage of reduction to all renewal fees provided for in this chapter, and such reduction must be made when commencing the licensing year and is in effect for the whole of such year.
4. Anyone ~~becoming~~ 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 ~~of his certificate~~ without payment of the restoration fee.

SECTION 3. A new section to chapter 43-04 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements.

1. The board may adopt rules establishing requirements for the continuing education of persons licensed under this chapter. Rules for accreditation of continuing education must allow accreditation for a variety of types of continuing education forums, including live presentations and correspondence education.

2. The board may suspend, revoke, place on probationary status, or refuse to renew any license issued under this chapter if the licensee fails to meet the continuing education requirements established by the board.
3. An applicant for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

Approved April 3, 1997

Filed April 3, 1997

CHAPTER 364**HOUSE BILL NO. 1239**

(Representative Keiser)
(Senator W. Stenehjem)

PODIATRIST LICENSING AND DISCIPLINE

AN ACT to amend and reenact subdivision o of subsection 1 of section 43-05-16, subsection 4 of section 43-05-16.1, and subsection 1 of section 43-05-16.5 of the North Dakota Century Code, relating to licensing and disciplining of podiatrists; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision o of subsection 1 of section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

- o. Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or ~~the payment or receipt~~ paying or receiving, directly or indirectly, ~~of~~ any fee, commission, rebate, or other compensation for services not actually or personally rendered, except for the lawful distribution of compensation or fees within a professional partnership, corporation, or association.

SECTION 2. AMENDMENT. Subsection 4 of section 43-05-16.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Impose a civil penalty not exceeding ten thousand dollars for each violation, the amount of the civil penalty fixed so as to deprive the podiatrist of any economic advantage gained by the violation or to reimburse the board for attorney's fees and the cost of the investigation and proceeding.

SECTION 3. AMENDMENT. Subsection 1 of section 43-05-16.5 of the North Dakota Century Code is amended and reenacted as follows:

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter ~~may~~ shall report the violation to the board.

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

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 365

HOUSE BILL NO. 1152

(Representative Carlson)

(At the request of the Secretary of State)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-02, 43-07-04, 43-07-09, 43-07-09.1, 43-07-10, 43-07-13, 43-07-14, 43-07-15, and 43-07-17 of the North Dakota Century Code, relating to licensing of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-02. License required - Enjoining operation without license. No person may engage in the business nor act in the capacity of a contractor within this state when the ~~original contract or subcontract~~ cost, value, or price per job exceeds the sum of two thousand dollars without first having a license as provided in this chapter. The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the ~~original contract or subcontract~~ cost, value, or price per job exceeds the sum of two thousand dollars, unless the person is properly licensed.

SECTION 2. AMENDMENT. Section 43-07-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant shall submit, on ~~such forms as the registrar shall prescribe~~ prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. No sooner than ten days after sending written notice to a contractor at the contractor's last known address, the registrar shall use procedures of chapter 28-32 to revoke the license of any contractor who fails to ~~maintain~~:

1. Maintain liability insurance coverage required by this section or by section 43-07-10; ~~or who fails to file~~;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11 ~~for any contractor~~.

Any person refused a license by the registrar or whose license is revoked pursuant to this section may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state:

3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

SECTION 3. AMENDMENT. Section 43-07-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending ~~February~~ March first.

SECTION 4. AMENDMENT. Section 43-07-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-07-09.1. Name changes. Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the secretary of state is not subject to this section.

SECTION 5. AMENDMENT. Section 43-07-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - ~~Revocation~~ Invalidity of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract obtained completed by the licensee during the preceding calendar year in this state over the amount of ten thousand dollars, the nature of the work ~~contracted of each project, contract, or subcontracted subcontract,~~ and, if a performance bond was required ~~by the contract,~~ the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability

insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal ~~when due, the registrar shall revoke by the March first deadline, the contractor's license. The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first the contractor must be notified by mail that the contractor's license is not in good standing. The contractor may then renew the license within ninety days after the filing deadline has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked.~~ Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

SECTION 6. AMENDMENT. Section 43-07-13 of the North Dakota Century Code is amended and reenacted as follows:

43-07-13. Records and certified copies thereof. The registrar shall maintain in ~~his~~ the registrar's office, open to public inspection during office hours, a complete indexed record of all applications ~~and all licenses issued and all certificates of renewal and of cancellations or suspensions, revocations, and other information maintained on contractors.~~ The registrar may dispose of an inactive contractor ~~license, cancellation, or suspension file~~ after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, ~~he~~ the registrar shall furnish a certified copy of any ~~license issued, of any renewal certificate, or of the cancellation or suspension thereof, information maintained~~ upon receipt of the sum of ~~five ten~~ ten dollars. Such certified copy must be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

SECTION 7. AMENDMENT. Section 43-07-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license ~~cancellation~~ revocation. Any person, including an employee or agent of the registrar, may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:

- a. A contractor fails to commence any work agreed upon in writing within sixty days of a starting date agreed upon in writing; or
 - b. A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
 3. The doing of any fraudulent act by the licensee as a contractor in consequence of which another is injured in an amount exceeding the amount set forth in subsection 1 of section 27-08.1-01.
 4. The making of any false statement in any application for a license or renewal thereof.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 8. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. ~~Cancellation~~ Revocation of license - Appeal - Procedure. Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, meets the requirements of subsection 1 of section 28-32-05. If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, ~~he~~ the registrar shall cancel or suspend revoke the contractor's license. A contractor aggrieved by a decision of the registrar in ~~suspending or canceling his~~ revoking the contractor's license may appeal ~~such~~ the decision to the district court of ~~his~~ that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of ~~cancellation or~~ revocation. A "licensee" whose license is ~~canceled or~~ revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

SECTION 9. AMENDMENT. Section 43-07-17 of the North Dakota Century Code is amended and reenacted as follows:

43-07-17. ~~Cancellation~~ Revocation of license - Relicensing. A licensee whose license has been ~~canceled~~ revoked may not be relicensed during the current calendar year in which the decision to ~~cancel~~ revoke the license was made.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 366

HOUSE BILL NO. 1384

(Representative Bernstein)
(Senator Heitkamp)

ELECTRICAL BOARD CIVIL PROCEEDINGS

AN ACT to amend and reenact sections 43-09-22 and 43-09-23 of the North Dakota Century Code, relating to the inspections of electrical installations and administrative actions by the state electrical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-22 of the North Dakota Century Code is amended and reenacted as follows:

43-09-22. Inspection of installation - Condemnation. The board has jurisdiction over and shall provide inspection for all electrical installations. Inspectors authorized by the board may condemn installations hazardous to life and property ~~and~~ or may order specific corrections to be made. Inspectors may order service thereto discontinued. ~~Such action may not be taken except~~ after notice to the owner of the property ~~and~~. The order is subject to the owner's right of appeal to the board. No condemned installation may be reconnected for service until proof has been furnished that the installation has been brought up to the required standards. The board may charge the master electrician responsible for the installation a fee to cover the cost of inspection. Cities may make provisions for inspection of all electrical work done within their corporate limits. City inspectors shall register their names with the board within ten days after their appointment.

SECTION 2. AMENDMENT. Section 43-09-23 of the North Dakota Century Code is amended and reenacted as follows:

43-09-23. ~~Penalty~~ Criminal penalty - Civil proceedings. Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to criminal proceedings, the board may commence administrative or civil court proceedings as follows:

1. The board may issue a cease and desist order against a person allegedly making or offering to make electrical installations in violation of section 43-09-09 or 43-09-09.2 based upon information provided to the board by its electrical inspectors or other persons, by investigation reports, affidavits, complaints of witnesses, or oral testimony given to the board at a regular or special board meeting. Violation of the cease and desist order may be considered by the court in issuing a temporary or permanent restraining order and in ordering the payment of costs and attorney's fees in proceedings authorized under this section.
2. The board may apply to the district court in the county in which the violations have occurred for a temporary or permanent injunction under chapter 32-06, enjoining persons from performing, advertising, or contracting for making electrical installations without a valid license issued by the board in violation of section 43-09-09 or 43-09-09.2. The court may not require a written undertaking, security, or bond as a basis

for issuing any temporary or permanent restraining order under this section unless the court specifically orders and states the basis for requiring the security. Upon a determination that a violation of section 43-09-09 or 43-09-09.2 has occurred, the court may assess against the defendants the actual costs incurred and reasonable attorneys' fees necessary for the investigation and court proceedings against the unlicensed person.

3. After an administrative hearing has been conducted by the board under chapter 28-32, an appeal from an order of the board or from the assessment of costs and attorneys' fees may be taken to the district court under chapter 28-32.

Approved March 26, 1997

Filed March 26, 1997

CHAPTER 367

SENATE BILL NO. 2136

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

FUNERAL PRACTICE AND LICENSING

AN ACT to create and enact eleven new sections to chapter 43-10 of the North Dakota Century Code, relating to funeral practice exceptions, limitations on licenses, registration of intern embalmers, and licenses to operate a crematorium; to amend and reenact sections 43-10-01, 43-10-02, 43-10-04, 43-10-05, 43-10-10, 43-10-11, 43-10-12, 43-10-13, 43-10-14, 43-10-15, 43-10-16, 43-10-19, 43-10-20, 43-10-22, 43-10-23, 43-10-24, and 43-10-25 of the North Dakota Century Code, relating to the powers of the state board of funeral service, licensure and regulation of funeral service practitioners, and disciplinary action of funeral service licensees; and to repeal sections 43-10-17 and 43-10-18 of the North Dakota Century Code, relating to state board of funeral service disciplinary hearings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-10-01. Definition of board Definitions. Whenever the word "board" is As used in this chapter, unless the context otherwise requires; ~~it~~:

1. "Board" means the state board of funeral service.
2. "Crematorium" means a furnace or establishment for the cremation of corpses.
3. "Embalming" means preparing dead human bodies for final disposition or removal by the injection of antiseptic or preservative preparations into the skin, the blood vessels, or cavities of the body. The external application of antiseptic solution, taking charge of the remains of those dead of any communicable disease, preparing dead human bodies for shipment or holding oneself out to do any of the above acts by advertising or any other means.
4. "Final disposition" means the entombment, burial in a cemetery, or cremation of a dead human body.
5. "Funeral directing" means the care and disposal of the body of a deceased person; the preserving, disinfecting, and preparing, by embalming or otherwise, the body of a deceased person for funeral services, transportation to a point of final disposition, burial, or cremation; or arranging, directing, or supervising a funeral, memorial service, or gravesite service.
6. "Funeral establishment" means any place or premises devoted to or used in the holding, care, or preparation of a dead human body for final

disposition or transportation or for mourning or funeral ceremony purposes.

7. "Funeral practitioner" means a person licensed by the board to practice funeral directing and embalming.
8. "Intern embalmer" means a person registered with the board to engage in learning the practice of embalming under the instruction and personal supervision of a duly licensed funeral practitioner.
9. "Practice of funeral service" means to engage in funeral directing or embalming.
10. "Preparation of the body" means embalming of the body or such items of care as washing, disinfecting, shaving, positioning of features, restorative procedures, care of hair, application of cosmetics, dressing, and casketing.

SECTION 2. AMENDMENT. Section 43-10-02 of the North Dakota Century Code is amended and reenacted as follows:

43-10-02. State board of funeral service - Members - Appointment - Qualifications - Term of office - Oath - Vacancies - Removal. The board consists of the state health officer and three persons appointed by the governor. Each member appointed by the governor shall serve for a term of four years and until a successor is appointed and qualified. The terms of office of the appointed members expire on the thirtieth day of June and must be so arranged that only one expires in any one year. The appointed members of the board must be persons practicing embalming in this state and must have practiced for a minimum of three years in North Dakota. Each member shall qualify by taking the oath of office required of civil officers. The secretary of state may administer the oath and it must be filed in the office of the secretary of state. A vacancy on the board must be filled by appointment by the governor for the unexpired term. The governor may remove any member of the board for good cause.

SECTION 3. AMENDMENT. Section 43-10-04 of the North Dakota Century Code is amended and reenacted as follows:

43-10-04. Meetings of the board - Quorum. The board shall meet at least once a year, and may hold such special meetings as the proper and efficient discharge of its duties requires. Timely notice of all meetings must be given to every member of the board; ~~and to all applicants for licensure.~~ Three members constitute a quorum for the transaction of business.

SECTION 4. AMENDMENT. Section 43-10-05 of the North Dakota Century Code is amended and reenacted as follows:

43-10-05. Power of board to adopt rules for transaction of business - Seal - License fees. The board may:

1. Adopt rules to administer and carry out this chapter.
2. Adopt rules regulating the practice, supervision and instruction of intern embalmers.

- ~~3.~~ 3. Adopt rules relating to the professional conduct of funeral directors and intern embalmers.
- ~~4.~~ 4. Adopt such rules for the transaction of its business and the management of its affairs as it deems expedient and proper to administer this chapter.
- ~~2.~~ 5. Adopt and use a seal.
- ~~3.~~ 6. Adopt rules requiring each funeral home, at the time of selection of merchandise and services from that funeral home, to disclose in writing to the person or persons making the selection:
 - a. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included within such total.
 - b. The price at retail of each item of supplemental service or merchandise requested.
 - c. The amount of cash advances to the extent that the advances are known or can be ascertained at the time of the selection.
 - d. The terms of payment for merchandise and services.
- ~~4.~~ 7. Establish license and renewal fees for funeral service practitioners and funeral establishments within the limits imposed by this chapter.
8. Adopt rules regulating the operation of funeral establishments and crematoriums.
9. Appoint or employ persons to assist the board in carrying out its duties under this chapter.
10. Accept and investigate complaints relating to conduct governed by this chapter.
11. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.

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

43-10-10. License required. ~~No~~ A person may ~~embalm a dead human body or not practice embalming or~~ funeral service in this state unless that person is licensed by the board or ~~under the direct supervision of a person licensed by the board~~ registered with the board as an intern embalmer.

SECTION 6. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Funeral practice - Exceptions.

1. Nothing in this chapter may be construed to prevent a person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public that the person is engaging in the practice of funeral service.

2. Nothing in this chapter may be construed to prevent embalming by commissioned medical officers in the armed forces of the United States or under the United States public health service while on active duty in a respective service.
3. This chapter does not prevent the transportation of a dead human body in accordance with other applicable state and federal laws.
4. This chapter does not prohibit ambulance or other emergency transportation of a dead human body.
5. This chapter does not prohibit members of the clergy from performing funeral and gravesite or memorial services.
6. This chapter does not prohibit individuals licensed in other states as embalmers or funeral directors from assisting a North Dakota licensed embalmer during disasters or special emergencies.
7. This chapter does not prohibit individuals employed by a funeral establishment from performing nonprofessional tasks or activities that do not require independent, professional judgment under the supervision of an individual licensed to practice funeral service.

SECTION 7. AMENDMENT. Section 43-10-11 of the North Dakota Century Code is amended and reenacted as follows:

43-10-11. Examination required - Application - Qualification. Any person who desires a license to practice ~~embalming, funeral directing, or preparing dead human bodies for burial~~ funeral service shall apply to the board on a form provided by the board and submit to an examination. The applicant shall submit with the application proof that the applicant has the following qualifications:

1. Is of good moral character.
2. Has such preliminary preparation and education as the rules of the board require.
3. Has completed a twelve-month internship in accordance with rules adopted by the board.

SECTION 8. AMENDMENT. Section 43-10-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-12. Examinations - Subjects covered - Written - Record. The examination for a license to practice funeral service ~~or preparing dead human bodies for burial or shipment~~ must be in writing and must cover the following subjects:

1. Anatomy.
2. Embalming.
3. Bacteriology.
4. Chemistry.
5. Pathology.

6. Mortuary management.
7. Restorative arts.
8. Rules of the state department of health and the board governing the practice of funeral service.
9. Other subjects that may be required by the board.

All examination papers must be kept on record by the board for a period of not less than three years.

SECTION 9. AMENDMENT. Section 43-10-13 of the North Dakota Century Code is amended and reenacted as follows:

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed. The board shall grant a license to practice funeral service ~~or preparing dead human bodies for burial or shipment,~~ if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than one hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable and nontransferable and must be displayed by the licensee in a conspicuous place in the licensee's office or place of business.

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

43-10-14. License by reciprocity. A licenseholder in good standing in another state maintaining a system and standard of examination equivalent to this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board, and proof of good moral character.

SECTION 11. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Limitations or qualifications placed on licensee. The board, if the facts support such action, may place reasonable limitations or qualifications on the right to practice funeral service or to operate a funeral establishment or crematory.

SECTION 12. AMENDMENT. Section 43-10-15 of the North Dakota Century Code is amended and reenacted as follows:

43-10-15. License - Term - Renewal - Fee for renewal. A license to practice funeral service ~~or preparing dead human bodies for burial~~ is valid for one year and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed one hundred dollars. The board may refuse to renew a license for cause.

SECTION 13. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Late renewal. A license that has been expired may be renewed at any time within three years after its expiration on filing an application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee determined by the board not to exceed one hundred fifty dollars. Renewal under this section is effected on the date on which the application is filed, on the date which the renewal fee is paid, or on the date on which the late fee, if any, is paid, whichever last occurs. A license that is not renewed within three years after its expiration may not be renewed thereafter.

SECTION 14. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Issuance of duplicate licenses. Upon receipt of satisfactory evidence that a license or certificate has been lost, mutilated, or destroyed, the board may issue a duplicate license or certificate upon such terms and conditions as the board prescribes, and upon payment of a fee of ten dollars.

SECTION 15. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Change of name. Any licensee desiring to change the name appearing on the licensee's license may do so by applying to the board and paying a fee of ten dollars.

SECTION 16. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Intern embalmer - Application - Qualifications. The board shall issue a certificate of registration as an intern embalmer to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by a fee not to exceed fifty dollars, and who furnished sufficient evidence to the board that the applicant:

1. Is at least eighteen years of age;
2. Is of good moral character;
3. Has completed an accredited four-year high school course of study and two years of accredited college or university studies; and
4. Has graduated from an accredited college of mortuary science.

SECTION 17. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Certificate of registration - Term - Renewal - Fee for renewal. A certificate of registration as an intern embalmer is valid for one year and may be renewed by the board upon payment to the treasurer of the annual renewal fee before December thirty-first of each year. Registration may not be renewed more than three times. The board may refuse to renew registration for cause.

SECTION 18. AMENDMENT. Section 43-10-16 of the North Dakota Century Code is amended and reenacted as follows:

43-10-16. Grounds for revocation of license disciplinary action - Reimbursement of costs. The board may revoke, suspend, place on probation, or refuse to issue a license to practice funeral service or preparing dead human bodies for burial, cremation, or shipment if certificate of registration as an intern embalmer upon proof at a hearing that the applicant, licensee, or certificate holder:

1. Is unfit to practice funeral service.
2. Has violated this chapter or the rules of the board.

The board may impose a fee on any person or other legal entity subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorneys' fees, court costs, witness fees, staff time, and other expenses.

SECTION 19. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Expiration of suspended license - Renewal. A suspended license is subject to expiration and must be renewed as provided in this chapter, but the renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates.

SECTION 20. AMENDMENT. Section 43-10-19 of the North Dakota Century Code is amended and reenacted as follows:

43-10-19. Hearing - Revocation Appeals. A licensed funeral service practitioner against whom charges have been made under section 43-10-16 may appear before the board at the time and place of the hearing and refute the charges made against that person. A board member may administer oaths to witnesses. If after considering the facts and circumstances, the board has sufficient reason to believe that the licensee is guilty of the charges made against the licensee, it may revoke, suspend, or refuse to issue a license. Hearings regarding disciplinary action or denial of a license must be held under chapter 28-32. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-15.

SECTION 21. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Restoration of license after revocation. One year from the date of revocation, the former licensee may make application for initial licensure. In order to receive a new license, the applicant must satisfy the current requirements for licensure.

SECTION 22. AMENDMENT. Section 43-10-20 of the North Dakota Century Code is amended and reenacted as follows:

43-10-20. Penalty. A person practicing or representing oneself as practicing funeral service, or preparing the dead for burial or shipment in violation of this chapter, is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of injunction is available to restrain and enjoin violations of any provision of this chapter without proof of actual damages sustained by any person and without the board being required to file an undertaking.

SECTION 23. AMENDMENT. Section 43-10-22 of the North Dakota Century Code is amended and reenacted as follows:

43-10-22. Licensure of funeral establishments. A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. A Except for on tribal land, a funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than one hundred dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of ~~a North Dakota~~ an individual licensed embalmer and to practice funeral director service. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

SECTION 24. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Display of license. The funeral establishment license issued by the board to a funeral establishment must be conspicuously displayed at the funeral establishment for which the license was issued.

SECTION 25. AMENDMENT. Section 43-10-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-23. Inspections - Hearings - Revocations - Appeal. The funeral establishment or that part of a funeral establishment in which is conducted or intended to be conducted any funeral service business, must be open at all times for inspection by the board or the state department of health. The board or agents employed by it and the state department of health may make such inspections as are necessary of facilities and equipment of funeral establishments to ensure compliance with safety and sanitary rules adopted by the board or any other rules or federal regulations pertaining to funeral service whenever either deems the inspection advisable. If, upon inspection, it is found that such rules are not complied with, the board shall notify the holder of the funeral establishment license and hold ~~hearings in the manner provided in sections 43-10-17, 43-10-18, and 43-10-19~~ a hearing. The board may subpoena witnesses, administer oaths, and take testimony. All proceedings under this section must be conducted in accordance with chapter 28-32. The board may, after a hearing, revoke, suspend, or refuse to issue or renew a license upon good cause. A person aggrieved by the action of the board may appeal to the district court of the county in which the person resides or the district court of Burleigh County in accordance with chapter 28-32.

SECTION 26. AMENDMENT. Section 43-10-24 of the North Dakota Century Code is amended and reenacted as follows:

43-10-24. Penalty. Any person willfully violating any of the provisions of sections 43-10-21 through 43-10-23, except rules and regulations promulgated under section 43-10-22, is guilty of a class B misdemeanor. Any person who willfully violates a rule or regulation promulgated under section 43-10-22 is guilty of an infraction.

SECTION 27. AMENDMENT. Section 43-10-25 of the North Dakota Century Code is amended and reenacted as follows:

43-10-25. Licensure of crematoriums. ~~After July 4, 1989, a~~ A person may not operate a crematorium without a license issued by the board. A person desiring to operate a crematorium shall submit an application for an annual license to the board. The license fee may not exceed one hundred dollars and must be the same as a funeral establishment license.

SECTION 28. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Grounds for disciplinary action. The board may revoke, suspend, place on probation, or refuse to issue a license to operate a crematorium upon proof at a hearing that the applicant or licensee:

1. Is unfit to operate a crematorium.
2. Has violated this chapter or rules adopted by the board.

SECTION 29. REPEAL. Sections 43-10-17 and 43-10-18 of the North Dakota Century Code are repealed.

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 368

HOUSE BILL NO. 1164

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

COSMETOLOGIST LICENSING AND REGULATION

AN ACT to amend and reenact sections 43-11-01, 43-11-02, 43-11-08, 43-11-11, 43-11-12, 43-11-17, 43-11-19, 43-11-20.1, 43-11-21, 43-11-23, 43-11-24, 43-11-26, 43-11-27, 43-11-28, 43-11-32, 43-11-33, 43-11-34, and 43-11-35 of the North Dakota Century Code, relating to licensure and regulation of cosmetologists and cosmetology salons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter thereof otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology is defined and includes, but otherwise is not limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building wherein the occupation of a cosmetologist is practiced.
4. ~~"Demonstrator" means any person who possesses the qualifications of a cosmetologist and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.~~
5. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

6. 5. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
7. 6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
8. 7. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
9. 8. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
10. 9. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
11. 10. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
12. 11. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
13. 12. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person.
14. 13. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
15. 14. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
16. 15. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-02. Exemptions from provisions of chapter. This chapter does not apply to:

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic a

person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a cosmetologist or manicurist.

4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation; ~~or by a licensed cosmetologist engaged in manicuring the nails of any person in a licensed barbershop.~~
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.
6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. The board may adopt rules to ensure sanitary conditions for services provided under this exemption.
7. Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.

SECTION 3. AMENDMENT. Section 43-11-08 of the North Dakota Century Code is amended and reenacted as follows:

43-11-08. Meetings of the board. The board shall meet at least twice each year ~~on the third Tuesday in January and July at times determined by the board.~~ The board may meet at such other times and places as is necessary to conduct the official business of the board shall publish annually the time and place of its regularly scheduled meetings. A majority of the members constitutes a quorum.

SECTION 4. AMENDMENT. Section 43-11-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-11. Sanitary rules - Practice outside salon. The board with the approval of the state department of health shall adopt sanitary rules necessary to prevent the creating and spreading of infectious and contagious diseases. A cosmetology salon must be at a fixed location ~~and must be separate from all other businesses and establishments~~ and may not be used for living or sleeping quarters. An operator may practice outside of the establishment under the direction and control of an owner or manager thereof under rules adopted by the board.

SECTION 5. AMENDMENT. Section 43-11-12 of the North Dakota Century Code is amended and reenacted as follows:

43-11-12. Persons to aid of board. The board may employ ~~or receive services from any person~~ a secretary, support staff, and other persons knowledgeable in cosmetology for conducting examinations, inspections, and investigations of persons regulated by this chapter. Any person employed by the board is entitled to receive fifty dollars for each day employed in the actual discharge of official duties, ~~and~~ expenses in the amounts payable under sections 44-08-04 and 54-06-09.

SECTION 6. AMENDMENT. Section 43-11-17 of the North Dakota Century Code is amended and reenacted as follows:

43-11-17. Licenses issued for schools of cosmetology, and cosmetology salons - Fee for annual registration. The board may issue an annual license for a school of cosmetology. The annual registration fee for a school must be determined ~~annually~~ by the board, as set forth in section 43-11-28. The board shall, after inspection and approval, issue a salon license, the annual fee for which must be determined ~~annually~~ by the board, as set forth in section 43-11-28.

SECTION 7. AMENDMENT. Section 43-11-19 of the North Dakota Century Code is amended and reenacted as follows:

43-11-19. Students - Registration. A student cosmetologist must:

1. ~~Be at least seventeen years of age~~ Adhere to the laws and rules regarding the practice of cosmetology;
2. ~~Be of good moral character;~~
3. Have educational qualifications equivalent to completion of four years of high school; and
4. 3. Have enrolled in a school of cosmetology and complied with the preliminary requirements thereof.

The names and qualifications of all students must be certified to the board by each school of cosmetology. The certification must be accompanied by a processing fee for each student in an amount as may be fixed by the board under section 43-11-28.

SECTION 8. AMENDMENT. Section 43-11-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-11-20.1. Refund of student tuition fees upon cancellation of course. Schools of cosmetology shall refund tuition and other charges paid by or on behalf of a student when written notice of cancellation is given by the student. Refunds must be made in accordance with the following schedule:

Term <u>Hours</u> Completed <u>Enrolled</u>	Tuition Retained By School
0.0% - 4.9%	20%
5% - 9.9%	30%
10% - 14.9%	40%
15% - 24.9%	45%
25% - 49.9%	70%
Over 50%	100%

Notice of this section, and of sections 43-11-20.2 and 43-11-20.3, must be posted in a conspicuous place in each school of cosmetology. The notice must be in a form and contain information as prescribed by the board. The board shall take action necessary to enforce this section and sections 43-11-20.2 and 43-11-20.3, including revocation of the license issued pursuant to section 43-11-17. This section does not prejudice the right of any student to commence a civil action against any school of cosmetology for breach of contract or fraud.

SECTION 9. AMENDMENT. Section 43-11-21 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-21. Operator's license - Examination required - Application - Examination - Fees. Each person who desires to secure an operator's 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:

1. ~~A health certificate signed by a licensed physician;~~
2. Satisfactory proof of the educational ~~and moral~~ qualifications required of a student;
3. ~~2.~~ An examination fee ~~and kit rental fee~~ as may be fixed by the board pursuant to section 43-11-28;
4. ~~3.~~ Satisfactory proof that the applicant has completed the required training in a school of cosmetology; and
5. ~~4.~~ A fee for original licensure as required by section 43-11-28.

SECTION 10. AMENDMENT. Section 43-11-23 of the North Dakota Century Code is amended and reenacted as follows:

43-11-23. Examination. The examination of applicants for license to practice under this chapter must be conducted under rules prescribed by the board and must include both practical demonstrations and written or oral tests in reference to the practices for which a license is desired and in reference to related studies or subjects as the board may determine necessary for the proper and efficient performance of a practice. The board may require the practical portion of the examination be conducted by schools of cosmetology as part of graduation requirements. The examination may not be confined to any specific system or method and must be consistent with the practical and theoretical requirements of cosmetology.

SECTION 11. AMENDMENT. Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

43-11-24. Operator's license - When issued - Failure to pass examination - Reexamination - Retraining. An operator's license must be issued to any person who has:

1. Complied with section 43-11-21; and
2. Passed to the satisfaction of the board, the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. Within one year after failing to pass an examination, the applicant may be examined again with the payment of a reexamination fee ~~and kit rental fee~~ as set forth in section 43-11-28. ~~Anyone~~ A person who fails to pass the reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology ~~prior to~~ before reapplying for examination.

SECTION 12. AMENDMENT. Section 43-11-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-26. Manager-operator - License - Qualifications. A person may obtain a manager-operator's license upon:

1. Furnishing to the board evidence of ~~being at least eighteen years of age and~~ having practiced as a licensed operator for at least one hundred twenty-five days;
2. Paying an original licensure fee ~~and examination fee~~ as set forth in section 43-11-28; and
3. ~~Passing an examination conducted by the board to determine fitness to practice as a manager-operator; and~~
4. ~~Complies~~ Complying with the other requirements of this chapter applicable to a manager-operator.

SECTION 13. AMENDMENT. Section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

43-11-27. Instructor's license - Student instructor's license - ~~Demonstrator's~~ License - Registration - Qualifications.

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

board of the name, age, and qualifications of the student instructor which must be recorded in a register kept for that purpose. A student instructor shall, at the time of enrollment, possess a general education equivalent to the completion of four years in high school and hold a license as a cosmetologist. Upon completion of the course prescribed for student instructors, the student instructor shall make application on a form provided by the board and pay a fee as provided in section 43-11-28. The board shall thereupon cause the applicant to be examined for an instructor's license. The examination must be given by a special examining committee comprised of the board, assisted by one person designated by the board possessing the minimum qualifications entitling the person to instruct in an institution of higher learning and who shall examine the applicant in teaching procedures only. Upon successfully passing the examination the board shall issue an instructor's license to the applicant.

3. ~~No person may be licensed as a demonstrator unless the person is a licensed cosmetologist or shall file proof with the board of continuously practicing in another state as a cosmetologist for a period of at least two years prior to the date of the application for license as a demonstrator and shall pay an original license fee as set forth in section 43-11-28.~~
4. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of attendance at an approved seminar pursuant to requirements prescribed by the board.

SECTION 14. AMENDMENT. Section 43-11-28 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-28. Fees.

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

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) Salons, original registration	\$ 75.00
(2) Salons, annual renewal	\$ 25.00
(3) School of cosmetology, original registration	\$500.00
(4) School of cosmetology, annual renewal	\$200.00
(5) Operator, original license	\$ 10.00
(6) Operator, annual renewal	\$ 10.00
(7) Manager-operator, original license	\$ 20.00
(8) Manager-operator, annual renewal	\$ 15.00
(9) Instructor, original license	\$ 30.00

(10)	Instructor, annual renewal	\$ 15.00
(11)	Demonstrators, original license	\$ 25.00
(12)	Demonstrators, annual renewal	\$ 15.00
(13)	Reciprocity license fee	\$100.00
(14)	Registration fee for student instructor	\$ 10.00
(15)	Duplicate license	\$ 5.00
(16)	Penalty fee for late renewal	\$ 10.00
(17)	Certification fee	\$ 15.00

b. Examinations:

(1)	Operator	\$ 20.00
(2)	Operator's kit rental fee	\$ 45.00
(3)	Manager-operator	\$ 20.00
(4)	Instructors	\$ 50.00
(5)	Instructor's kit rental fee	\$100.00
(6) (3)	Reexamination fee, operator's	
	(a) Practical	\$ 25.00
	(b) Written	\$ 15.00
(7)	Reexamination fee, manager-operator	\$ 20.00
(8) (4)	Reexamination fee, instructors	
	(a) Practical	\$ 50.00
	(b) Written	\$ 20.00

2. Fees are not prorated or returnable. The board may charge a ten dollar penalty for license renewal applications received after December thirty-first. The board may reduce a renewal fee from the maximum amount only if it the board applies an equal percentage of reduction to all renewal fees. The board shall sponsor an educational program for licenseholders to carry out the purposes of protecting the public health and safety and maintaining capable and skilled operators, manager-operators, and instructors. The board is directed to shall use such portion of the renewal fees as the board may determine for the purpose of providing the educational program.

SECTION 15. AMENDMENT. Section 43-11-32 of the North Dakota Century Code is amended and reenacted as follows:

43-11-32. Hearing may be held by any member Hearings. Any investigation, inquiry, or hearing, which the board may hold or undertake under the provisions of this chapter, may be held or undertaken by, or before, any member or members of the board, and the finding or order of such member or members must be deemed to be the finding or order of the board when approved and confirmed by it. All hearings must be conducted pursuant to chapter 28-32. For purposes of the hearing, the licensee or applicant is deemed to be the sole party in interest under section 28-32-08 and the provisions of section 28-32-05 apply only to the licensee.

SECTION 16. AMENDMENT. Section 43-11-33 of the North Dakota Century Code is amended and reenacted as follows:

43-11-33. Hearings - Board may subpoena witnesses - Fees - How paid. The board may require the attendance of witnesses and the production of books, records, and papers at any hearing or with reference to any matter which it has authority to investigate, and for that purpose may ~~require the secretary to~~ issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. ~~The subpoena must be directed to the sheriff of the county where the witness resides or is found, and must be served and returned in the same manner as a subpoena in a criminal case.~~ The fees and mileage of the sheriff and witnesses must be the same as may be allowed in the court in criminal cases. Fees and mileage must be paid in the same manner as expenses of the board.

SECTION 17. AMENDMENT. Section 43-11-34 of the North Dakota Century Code is amended and reenacted as follows:

43-11-34. Appeal from actions of the board. An appeal may be taken from an action of the board under this chapter in refusing to grant, or in suspending or revoking a license, to the district court of the county of residence of the person who has been refused a license or whose license has been suspended or revoked. The appeal must be taken in accordance with the provisions of chapter 28-32.

SECTION 18. AMENDMENT. Section 43-11-35 of the North Dakota Century Code is amended and reenacted as follows:

43-11-35. Penalty. Any person who, without a license, willfully practices any of the occupations, maintains a school, or acts in any capacity, wherein a license is required by this chapter, is guilty of a class B misdemeanor.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 369**HOUSE BILL NO. 1232**

(Representative Kretschmar)

ADVANCED PRACTICE NURSE LICENSING

AN ACT to amend and reenact subsection 5 of section 43-12.1-09 of the North Dakota Century Code, relating to the licensing requirements for advanced practice registered nurses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-12.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state ~~prior to August 4, 1995~~ before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that person meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 370

HOUSE BILL NO. 1334

(Representatives Gorder, Froseth, Christopherson)
(Senators Andrist, Kinnoin, Yockim)

OPTOMETRY PRACTICE AND LICENSING

AN ACT to create and enact a new subsection to section 43-13-13.3 of the North Dakota Century Code, relating to consultations with a licensed ophthalmologist; and to amend and reenact sections 43-13-01 and 43-13-22 of the North Dakota Century Code, relating to definitions and licenses in the practice of optometry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-01 of the North Dakota Century Code is amended and reenacted as follows:

43-13-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota state board of optometry.
2. "Diagnosis and treatment" means the determination, interpretation, and treatment of any visual, muscular, neurological, or anatomical anomaly of the eye which may be aided, relieved, or corrected through visual training procedures or through the use of lenses, prisms, filters, ophthalmic instruments, pharmaceutical agents, or combinations thereof, held either in contact with the eye, or in frames or mountings, as further authorized by this chapter. Laser therapy and the use of invasive surgery are not permitted under this chapter, except superficial foreign bodies may be removed and primary care procedures may be performed. ~~The treatment of glaucoma is not permitted under this chapter.~~
3. "Optometry" means a primary health care profession whose practitioners are engaged in the evaluation of disorders of the human eye and the examination, diagnosis, and treatment thereof, together with its appendages.
4. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic pharmaceutical agents. The term ~~does not include~~ includes nonscheduled pharmaceutical agents, except for acetaminophen with thirty milligrams of codeine, that have ~~no~~ documented use in the treatment of ocular-related disorders or diseases; ~~oral cortico-steroids, and controlled substances, as defined in chapter 19-03.1.~~ As used in this subsection:
 - a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered for the evaluation and diagnosis of disorders of the human eye including anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains, and pharmaceutical agents to evaluate abnormal pupil responses.

- b. "Therapeutic pharmaceutical agents" ~~means~~ includes topically administered and prescribed pharmaceutical agents for treatment of ocular-related disorders or disease, locally administered pharmaceutical agents for primary eye care procedures, oral anti-infective agents, oral antihistaminic agents, and oral analgesics for the treatment of ocular-related disorders or diseases. The dispensing of therapeutic pharmaceutical agents is not permitted under this chapter.
5. "Practicing optometry" means:
- a. Displaying a sign or in any way advertising as an optometrist.
 - b. Employing any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof.
 - c. Engaging in any manner in the practice of optometry.

SECTION 2. A new subsection to section 43-13-13.3 of the North Dakota Century Code is created and enacted as follows:

After initiating treatment for primary open-angle glaucoma, the therapeutically certified optometrist shall consult with a licensed ophthalmologist within seventy-two hours. A treatment plan for each individual patient must be cooperatively identified in accordance with the currently accepted standard of care. In treating and managing glaucoma, if no progress is achieved in realizing the selected range of pressure considered unlikely to cause further optic nerve damage or resulting in further visual field loss, a referral must be made to a licensed ophthalmologist without delay.

SECTION 3. AMENDMENT. Section 43-13-22 of the North Dakota Century Code is amended and reenacted as follows:

43-13-22. License - When revoked. The board may revoke or suspend any license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the holder of the license:

1. Has violated any provisions of this chapter, the rules and regulations of the board, or committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Has ~~prescribed, sold, administered, or distributed, or given~~ any drug legally classified as a controlled substance or as an addictive or dangerous drug;
3. Has been addicted to the excessive use of intoxicating liquor or a controlled substance for at least six months immediately prior to the filing of the charges;
4. Is afflicted with any contagious or infectious disease;

5. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;
6. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than one who holds a valid unrevoked license as an optometrist in this state and who has an actual legal residence within this state.

Any person whose license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that the disability has been removed and upon such conditions as established by the board.

Approved March 23, 1997
Filed March 24, 1997

CHAPTER 371

SENATE BILL NO. 2234

(Senators Nalewaja, Kringstad, Thompson)
(Representatives Boucher, Henegar, Poolman)

DRUG ADMINISTRATION DEFINITION

AN ACT to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to the definition of administration as it relates to drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-15-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "~~Administer~~" "Administration" means the direct application of a drug to the body of a patient. The term includes ~~the initial application of a drug for the purpose of teaching utilization of a drug and the emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available.~~ The term excludes the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.

Approved April 9, 1997

Filed April 10, 1997

CHAPTER 372

SENATE BILL NO. 2122

(Human Services Committee)

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

PHYSICIAN LICENSING AND CONTINUING EDUCATION

AN ACT to create and enact a new subsection to section 43-17-02, sections 43-17-26.1, and 43-17-27.1 of the North Dakota Century Code, relating to persons exempt from licensure as a physician, physician license renewals and late fees, and continuing education for physicians; and to amend and reenact section 43-17-18 of the North Dakota Century Code, relating to license requirements for physicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners prescribes rules governing the conduct and supervision of radiologic technologists who provide those services.

SECTION 2. AMENDMENT. Section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

43-17-18. Qualifications of applicant for license License requirements. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

1. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;
2. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;
3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. However, the board may license an applicant with one year of residency training in the United States or Canada who has been

approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program. If an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of postgraduate training, then the applicant may be deemed eligible for licensure. Three years of postgraduate training in the United Kingdom must be considered to be equivalent to one year of postgraduate training in the United States or Canada. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements;

1. General - Every applicant for licensure shall file a written application on forms provided by the board, showing to the board's satisfaction that the applicant is of good moral character and satisfies all of the requirements of this chapter including:
 4. a. Successful completion of a medical licensure examination satisfactory to the board;
 5. b. Physical, mental, and professional capability for the practice of medicine in a manner acceptable ~~by~~ to the board; and
 6. c. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act ~~which~~ that would constitute grounds for disciplinary action under this chapter; the board, ~~in its discretion,~~ may modify this restriction for cause.
2. Graduates of United States and Canadian schools.
 - a. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant has been awarded a degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions, territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred.
 - b. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board or by an accrediting body approved by the board.

3. Graduates of international schools.

- a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.
- b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed three years of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:
- (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
 - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.
- c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
- d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

4. Special license - The board may grant a special license to an applicant who is a graduate of an international medical school if that applicant has met all requirements for licensure except those pertaining to postgraduate training if the applicant has successfully completed one

year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state. This special license is valid only for the purpose of practicing medicine within the scope of the residency training program.

SECTION 3. Section 43-17-26.1 of the North Dakota Century Code is created and enacted as follows:

43-17-26.1. License renewals - Late fees. A physician seeking to renew the annual registration who has failed to complete the annual registration process within the time specified by the state board of medical examiners must be assessed a fee equal to three times the normal annual registration fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

SECTION 4. Section 43-17-27.1 of the North Dakota Century Code is created and enacted as follows:

43-17-27.1. Continuing education requirements.

1. The board shall promote a high degree of competence in the practice of medicine by establishing rules requiring every physician licensed in the state to fulfill continuing education requirements. Compliance with these rules must be documented at such times and in such manner as is required by the board.
2. Before a license may be renewed, the licensee shall submit evidence to the board establishing that all continuing education requirements prescribed by the rules adopted by the board have been met.
3. The board may exempt a physician from the requirements of this section in accordance with rules adopted by the board.

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 373

HOUSE BILL NO. 1135

(Political Subdivisions Committee)

(At the request of the Board of Medical Examiners)

MEDICAL EXAMINER DISCIPLINE

AN ACT to amend and reenact sections 43-17-31, 43-17-32.1, subsection 1 of section 43-17.1-05, and section 43-17.1-05.1 of the North Dakota Century Code, relating to grounds for disciplinary action, suspensions, complaints, and reports under the board of medical examiners; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31. Grounds for disciplinary action. Disciplinary action may be imposed against a physician upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. 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. Habitual use of alcohol or drugs.
5. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. Obtaining any fee by fraud, deceit, or misrepresentation.
8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. 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 the commission on medical competency.
10. The practice of medicine under a false or assumed name.

11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. The failure of a doctor of osteopathy to designate ~~his~~ that person's school of practice in the professional use of ~~his~~ that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
17. 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. 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. The failure to ~~furnish the board, its investigators or representatives,~~ information legally requested by the board comply with the reporting requirements of section 43-17.1-05.1.
- ~~20.~~ 20. The failure to transfer medical records, except those relating to psychiatric treatment which ~~shall~~ must be governed by board rule, to another physician or to supply copies thereof to the patient or to ~~his or her~~ the patient's representative when requested to do so by the patient or ~~his or her~~ the patient's designated representative. A reasonable charge for record copies may be assessed.
- ~~24.~~ 20. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- ~~22.~~ 21. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
- ~~23.~~ 22. 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.
- ~~24.~~ 23. The violation of any state or federal statute or regulation relating to controlled substances.
- ~~25.~~ 24. 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.~~ 25. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- ~~27.~~ 26. The failure to properly monitor a physician assistant or an emergency medical technician.
- ~~28.~~ 27. The failure to furnish the board or the commission on medical competency, their investigators, or representatives, information legally requested by the board or the commission.

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.

SECTION 2. AMENDMENT. Section 43-17-32.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board has ~~verified evidence that~~ probable cause requires to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm, the board may order a temporary suspension ex parte.
2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 3. AMENDMENT. Subsection 1 of section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. All residents have the right to make or refer written complaints to the commission with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Any person who, in good faith, makes a report to the commission on medical competency under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the commission shall conduct ~~such~~ the investigation as it deems necessary to resolve the matter as it deems appropriate. The

commission shall determine whether the physician has committed any of the grounds for disciplinary action provided for by section 43-17-31.

SECTION 4. AMENDMENT. Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to commission on medical competency - When required.

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

Approved April 1, 1997
Filed April 2, 1997

CHAPTER 374

HOUSE BILL NO. 1148

(Representatives Wardner, Glassheim, Byerly)

ENGINEER AND SURVEYOR REGISTRATION

AN ACT to amend and reenact sections 43-19.1-18 and 43-19.1-22 of the North Dakota Century Code, relating to the registration of professional engineers and land surveyors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-18. Registration fees. The board shall establish registration fees for professional engineers, engineers-in-training, land surveyors, and land surveyors-in-training in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter; ~~but~~. The registration fees may not exceed the amount of fifty dollars for a one-year period or one hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

SECTION 2. AMENDMENT. Section 43-19.1-22 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-22. Expirations and renewals. Certificates of registration expire on ~~the last day of the month of December following thirty-first of the year of their issuance if registration is on an annual basis and of the year after their issuance if issued on a biennial basis,~~ and become invalid after that date unless renewed. ~~It is the duty of the~~ The secretary of the board shall notify every person registered under this chapter of the date of the expiration of ~~said~~ that person's certificate of registration and the amount of fee required for its renewal. ~~Such~~ The notice must be mailed to the registrant at ~~his~~ the registrant's last known address at least one month in advance of the expiration of ~~said~~ the registrant's certificate. Renewal may be effected at any time ~~prior to~~ before or during the month of December by the payment of a fee as established by the board, not to exceed the fees established in section 43-19.1-18. Renewal of an expired certificate may be effected under rules ~~promulgated~~ adopted by the board regarding requirements for reexamination and penalty fees.

Approved February 11, 1997

Filed February 11, 1997

CHAPTER 375**SENATE BILL NO. 2394**
(Senator Tomac)**MASSAGE THERAPIST LICENSING**

AN ACT to amend and reenact sections 43-25-03, 43-25-05, 43-25-07, 43-25-08, 43-25-09, 43-25-10, 43-25-11, 43-25-12, 43-25-13, and 43-25-18 of the North Dakota Century Code, relating to North Dakota board of massage and massage therapist licensure; and to repeal section 43-25-01 of the North Dakota Century Code, relating to massage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-03 of the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be ~~registered~~ licensed. ~~It is unlawful for any~~ A person or persons to engage ~~may not:~~

1. Engage in the practice or attempt to practice massage for a fee; or for a gratuity or to conduct or teach massage without a certificate of registration license issued pursuant to the provisions of under this chapter;

~~It is unlawful for any person or persons to operate;~~

2. Operate or conduct any a massage establishment ~~which does not conform to unless it meets the sanitary regulations herein contained, or which may be requirements of this chapter and any regulations adopted by the board; or to employ any person as an operator who does not hold a certificate of registration.~~

~~It is unlawful for any person or persons to practice;~~

3. Employ an unlicensed person to work as a massage therapist; or
4. Practice any branch of massage as defined in subsection 3 of section 43-25-02, whether for payment or free demonstration, without first being a registered licensed massage therapist under the provisions of this chapter, or without operating and maintaining a bona fide massage establishment, and without first paying a registration license fee to the board.

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

43-25-05. Board of massage - Terms. The governor shall appoint the ~~North Dakota~~ board of massage, to consist of three massage therapists who are ~~members of the North Dakota massage therapy association~~ licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year, and each member shall hold office until that member's successor is appointed and qualified.

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

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

1. Any person who is eighteen years of age or more, a high school graduate, a bona fide resident of ~~the this~~ state of North Dakota for at least one month immediately preceding the application to take the examination, and of good moral character and temperate habits is entitled to apply to the secretary-treasurer of the board. ~~The person~~ An applicant is entitled to ~~be issued a certificate of registration as a massage therapist licensure~~ if the ~~person~~ applicant:
4. a. ~~Presents a diploma or credentials issued by a school of massage approved by the American massage therapy association or shows that meets the applicant is an active member standards set by the board, which may not be less than the standards of the American massage therapy association.~~
2. b. Passes a reasonable demonstrative, oral, and written examination conducted by the board in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths.
3. c. Pays the required fees ~~required, which.~~ These fees must accompany the application to the secretary-treasurer of the board.
2. An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. Any applicant failing to pass the requirements is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from ~~registration licensure~~ 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 massage therapist or ~~that~~ the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-25-08 of the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for ~~certificate of registration~~ license. The fee to be paid by an applicant to determine fitness to receive a certificate of registration license is one hundred fifty dollars or a lesser amount established by the board.

SECTION 5. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. Certificate of registration - Recording - Displaying conspicuously License - Display - Renewal - Renewal fee. Each certificate of registration license must be conspicuously displayed at the place of practice and must be recorded in the

office of the clerk of the district court in any county where the ~~registered~~ licensed massage therapist practices within thirty days after issuance. On or before January first of each year, each ~~registered~~ 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. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the ~~certificate~~ license. If the board reasonably believes a massage therapist is in ~~such a~~ physical condition ~~as to jeopardize~~ jeopardizing the health of those who seek relief from the massage therapist, the board may require the applicant to have a physical examination by a competent medical examiner. If the applicant has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a ~~certificate~~ license until the applicant furnishes due proof of being physically and mentally competent and sound. A holder of an expired ~~certificate of registration~~ license may within one year from the date of its expiration have the ~~certificate~~ license renewed upon payment of the required renewal fee and production of a new certificate of physical examination. All ~~certificate holders~~ licenseholders must be designated as ~~certified~~ licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 6. AMENDMENT. Section 43-25-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-10. Revocation of ~~certificates~~ license - Preferment of charges.

1. The ~~certificate of registration~~ license of a massage therapist may be revoked, suspended, or annulled upon any ~~one or more~~ of the following grounds:
 1. ~~That the registrant~~ The licensee is guilty of fraud in the practice of massage or fraud or deceit in ~~his~~ admission to the practice of massage.
 2. ~~That the registrant~~ The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within ~~the this state of North Dakota~~ would constitute an offense under ~~the this state's~~ laws thereof.
 3. ~~That the registrant~~ The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 4. ~~That the registrant~~ The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to ~~such an the extent as to incapacitate him or her for the performance of his or her the licensee is incapacitated from performing the professional duties of a massage therapist.~~
 5. ~~That the registrant~~ The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, ~~or that he or she the licensee prescribes medicines, drugs, or vitamins, or the licensee infringes on any other licensed profession.~~

6. ~~f.~~ f. ~~That the registrant~~ The licensee is guilty of willful negligence in the practice of massage, or ~~has been~~ is guilty of employing, allowing, or permitting any ~~unregistered~~ unlicensed person to perform massage in ~~his or her~~ the licensee's establishment.
7. ~~g.~~ g. ~~That said registrant~~ The licensee has violated any ~~provisions~~ of this chapter.
8. 2. Any ~~registrant~~ licensee who does not renew ~~his or her registration~~ a massage therapist license for two consecutive years because of sickness or other reason, or because of absence from the state of ~~North Dakota~~, must take the examination as prescribed for an applicant to become a registered operator and ~~to~~ comply with all the provisions ~~hereof~~, of this chapter applicable to any applicant to become a ~~registrant~~ licensee.
3. Charges may be preferred by any person, or the board may on its own motion direct the executive officer of ~~said~~ the board to prefer ~~said~~ any charges. Any accusation may be filed with the secretary-treasurer of the board charging any ~~registered~~ licensed massage therapist with any of the offenses ~~herein~~ enumerated in this section. ~~Such accusation shall be in writing~~, An accusation must be signed by the accuser and verified under oath.

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

43-25-11. Provisions for hearing - Notice.

1. Whenever ~~such~~ accusations as ~~provided in~~ under section 43-25-10 are filed, the board shall set a day for hearing and the secretary-treasurer of the board shall transmit to the accused a ~~true~~ copy of ~~any and~~ all charges filed ~~with him~~ relating to ~~such~~ the accusations, and shall notify in writing the accused that on the day fixed for the hearing, which ~~shall~~ may not be less than ten days from the date of ~~such~~ notice, ~~he~~ the accused may appear or show cause if ~~any~~, why ~~his or her~~ certificate and the ~~accused's~~ license to practice massage in ~~the~~ this state of ~~North Dakota~~ should not be revoked, suspended, or annulled. For the purpose of ~~such~~ this type of hearing, the board may require by subpoena the attendance of witnesses, to administer oaths and hear testimony and receive evidence, either oral or documentary, for and against the accused, and ~~said~~ the accused ~~shall have~~ has the right at ~~said~~ the hearing to cross-examine the witnesses, to produce ~~witnesses in his~~ defense witnesses, and to appear personally or by counsel. The notice provided for in this section ~~shall~~ must be substantially in the following form:

To _____ ~~You are hereby notified that charges~~
charges have been filed with the secretary-treasurer of the North
 Dakota Board of Massage against you as a practicing
 _____ in the state of North Dakota; ~~a true~~. A
 (Massage Therapist)

copy of ~~such~~ the charges ~~being~~ is attached ~~hereto~~, and that ~~the~~ said.
 The board has fixed the ____ day of _____, ~~A.D.~~
 19____ at the hour of _____ o'clock _____ at _____ in
 _____ for a hearing on such charges, at which time and place

you are hereby notified to appear before the board, and show cause, if you can, why your certificate license to practice massage in the state of North Dakota should not be revoked, suspended, or annulled. At the same time and place the board will hear testimony and receive evidence, either oral or documentary, or both, for and against you relating to such the charges.

Dated at _____ this ____ day of _____ ~~A.D.~~, 19____.

Secretary-treasurer of the
North Dakota Board of Massage

2. ~~Such notice shall~~ Notice must be sent to the accused by registered or certified mail directed to ~~his the accused's~~ last known mailing address, and the post-office registration receipt ~~thereof~~, signed by the accused or ~~his the accused's~~ agent, ~~shall be is~~ prima facie evidence of service of ~~such~~ notice.

SECTION 8. AMENDMENT. Section 43-25-12 of the North Dakota Century Code is amended and reenacted as follows:

43-25-12. Power of board to revoke, suspend, or annul certificates licenses. ~~The board may, upon~~ Upon satisfactory proof ~~made~~ that any ~~certificate holder has been licensee is~~ guilty of any of the charges preferred ~~against him or her~~, the board may revoke, suspend, or annul any certificate license to do business ~~issued hereunder~~ under this chapter, upon a two-thirds majority vote of the board. An appeal from the final decision of the board may be taken under chapter 28-32. Any person who practices massage after ~~his or her certificate has been revoked, suspended, or annulled~~ must be revocation, suspension, or annulment is deemed to have practiced massage without a certificate license. However, at any time after six months from the date of conviction, the board may in the exercise of its reasonable discretion by a majority vote, issue a new certificate license to the person affected, restoring or conferring all rights and privileges of and pertaining to the practice of massage, but the fee must be the same as upon issuance of the original certificate license.

SECTION 9. 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 book of the names of all persons to whom ~~certificates licenses~~ licenses have been granted under this chapter, the certificate license number of each, the date of granting each certificate license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of ~~the this state of North Dakota~~. The original books, records, and papers of the board must be kept at the office of the secretary-treasurer. The secretary-treasurer shall furnish to any person a copy of any ~~such~~ record, certified by the secretary-treasurer, upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer shall prepare and submit to the governor ~~and to the North Dakota massage therapy association~~ a biennial report detailing income and expenses and a list of massage therapists ~~certified licensed~~.

SECTION 10. AMENDMENT. Section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage ~~which in a state that~~ has and maintains a standard of practice, which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in ~~such this~~ practice for two years or more immediately before filing ~~his or her~~ of an application to practice in this state, and who ~~shall submit~~ submits to the board a duly attested certificate from the examining board of the state in which ~~he or she~~ is registered, certifying to the fact of ~~his or her~~ registration and being a person of good moral character and of professional attainments, may upon paying a fee of thirty-five dollars be granted a certificate license to practice in this state without being required to take an examination; ~~provided, however, that~~ no certificate license may be issued to any applicant unless the state ~~or territory~~ from which the certificate is granted extends a like privilege to engage in the practice of massage as ~~defined in this chapter~~ within its borders to persons registered licensed under the provisions of this chapter, ~~to practice in this state removing to such upon practicing in that~~ other state. The board ~~has the power to~~ may enter ~~into~~ reciprocal relations with other states whose requirements are substantially the same as those ~~herein~~ provided in this chapter.

SECTION 11. REPEAL. Section 43-25-01 of the North Dakota Century Code is repealed.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 376**SENATE BILL NO. 2355**
(Senator Kelsh)**VETERINARIAN LICENSING AND CONTINUING
EDUCATION**

AN ACT to create and enact two new sections to chapter 43-29 of the North Dakota Century Code, relating to examination, licensing, and continuing education requirements of veterinarians; to amend and reenact sections 43-29-01.1, 43-29-03, 43-29-06, 43-29-07, 43-29-09, 43-29-13, 43-29-14, 43-29-15, and 43-29-16 of the North Dakota Century Code, relating to veterinarians; and to repeal sections 43-29-08 and 43-29-12 of the North Dakota Century Code, relating to veterinary certificates of registration and definition of veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-01.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-01.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Accredited or approved college of veterinary medicine" means any veterinary college or division of a university or college which offers the degree of doctor of veterinary medicine or its equivalent and which conforms to the standards required for accreditation or approval by the American veterinary medical association.
2. "Accredited program in veterinary technology" means any postsecondary educational program of two or more academic years that has fulfilled the essential criteria established by the committee on veterinary technician education and activities and approved by the American veterinary medical association house of delegates.
3. "Animal" means any animal other than a human being. The term includes a any mammal, bird, fish, and reptile, or fowl, whether wild or domestic, living or dead.
- ~~2.~~ 4. "Board" means the board of veterinary medical examiners.
5. "Certificate" means a certificate issued by the American veterinary medical association educational commission for foreign veterinary graduates, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.
- ~~3.~~ 6. "Licensed veterinarian" means a person who is licensed by the board to practice veterinary medicine.

4. 7. "Licensed veterinary technician" means a person who has graduated from ~~a~~ an accredited program in veterinary technology program that is accredited according to the standards adopted by the American veterinary medical association's committee on veterinary technician education and activities, or an equivalent program as determined by the board, and who has passed an examination prescribed by the board.
8. "Practice of veterinary medicine" means to:
- a. Diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions. The term includes the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, the use of any manual or mechanical procedure for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above.
 - b. Represent, directly or indirectly, publicly or privately, an ability and willingness to do an act described in subdivision a.
 - c. Use any title, word, abbreviation, or letter in a manner or under circumstances that induce the belief the person using the title, word, abbreviation, or letter is qualified to do any act described in subdivision a.
 - d. Apply principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control, and disaster medicine in the promotion and protection of public health.
9. "Veterinarian-client-patient relationship" means:
- a. The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, who is the owner or other caretaker, has agreed to follow the instruction of the veterinarian.
 - b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept.
 - c. The practicing veterinarian is readily available for followup in the case of adverse reactions or failure of the regimen of therapy.
10. "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, chiropractic, acupuncture, and all other branches or specialties of veterinary medicine.

SECTION 2. AMENDMENT. Section 43-29-03 of the North Dakota Century Code is amended and reenacted as follows:

43-29-03. Officers of board - Seal - Meetings - Limitations on meetings - Examinations - Rules - Code of ethics - Inspection of facilities - Educational requirements - Reciprocity.

1. The ~~state board of veterinary medical examiners~~ shall elect a president and a secretary. The board shall have a ~~common~~ seal, and the president and the secretary ~~thereof~~ may administer oaths. ~~‡ The board~~ shall hold meetings semiannually in the spring and fall of each year for the examination of candidates at a time and place specified by ~~said the~~ board. ~~This~~ The board may hold such any other meetings as meeting it may deem determines necessary at such the time and place as it shall designate designates. No session of the board may exceed two days. A quorum of the board consists of two members and such quorum is sufficient to conduct the business and proceedings of the board ~~set forth in this chapter~~, except that any changes in the rules ~~and regulations~~ must be taken at a meeting at which all ~~of~~ the members are present.
2. The board is hereby authorized and empowered to promulgate, revise, alter, amend, may adopt and enforce reasonable rules, regulations, and orders ~~which that~~ it determines in its discretion to be necessary to the performance of its duties and the regulation of the practice of veterinary medicine; ~~to~~ establish standards for professional conduct, inspection of facilities, and educational requirements for renewal and granting of licenses; ~~to~~ prescribe forms for application for examination; ~~to~~ prepare and supervise examination of applicants for license to practice veterinary medicine; ~~to~~ obtain the services of professional examination agencies in lieu of its own preparation of such examinations; and ~~to~~ issue and revoke licenses as hereinafter provided in this chapter. All rules ~~so promulgated, revised, altered, or amended~~ must be submitted to the attorney general in accordance with chapter 28-32. ~~‡ approved, they must be printed and mailed to all licensed veterinarians practicing within this state.~~
3. The board may, in its discretion, enter ~~into~~ reciprocal agreements with the examining boards of other states and nations, governing the granting of licenses to practice veterinary medicine and surgery in ~~the this~~ state of ~~North Dakota~~ without the applicant taking a written examination. Under no circumstances, however, may any reciprocal agreement be entered ~~into~~ with the board of another state or nation unless the requirements for the granting of licenses in the other state or nation are on an equal or higher standard to the requirements of ~~North Dakota this state.~~ The board may prescribe by regulation rule any other terms or conditions to be contained in any such the agreements. The board shall determine the fee for license by reciprocity agreement must be determined by the board.

SECTION 3. AMENDMENT. Section 43-29-06 of the North Dakota Century Code is amended and reenacted as follows:

43-29-06. Graduation from recognized school and certificate or permit from board required - Application for license. Only those persons who are graduates a graduate of the veterinary course offered in a veterinary school, college, or university recognized by the board, and who possesses a certificate ~~or permit~~ of registration issued by the state board of veterinary medical examiners which is in ~~full force and effect~~ may ~~hold themselves out or~~ engage in the practice of veterinary medicine, surgery, or dentistry, or any department thereof.

Any person qualified under the provisions of this chapter, desiring to begin the practice of veterinary medicine or veterinary surgery in the state of North Dakota, shall make application to said board for license to do so. Such application must be made at least thirty days prior to the meeting of the board. The board shall give public notice of the time and place for the examination.

SECTION 4. AMENDMENT. Section 43-29-07 of the North Dakota Century Code is amended and reenacted as follows:

43-29-07. Application for license - Fees for examination and registration - Fees not to be returned - Renewal fees - Certificate of registration - Roster of registered veterinarians - Change of address - Renewal of registration upon forfeiture
Display of certificate of registration.

1. Any person desiring a license to practice veterinary medicine in this state shall make written application for licensing to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota veterinary medical examining board a fee of fifty dollars. Fees may not be returned, except by action of the board. If the license is granted, the licensee shall pay on or before the date set out in this section, for such time as the licensee shall continue practice, an annual registration fee as determined by the board, based on the financial needs of the board. The renewal registration fee must be paid by all licensed veterinarians.

All veterinarians actually engaged and employed as such by the state, county, city, or by any corporation, limited liability company, firm, or individual must be deemed to be practicing veterinary medicine and shall secure a state license or certificate of qualification issued by the board.

Each person licensed by the board shall on or before the first day of July of each calendar year be required to pay the annual renewal registration fee to the executive secretary. Before the first day of June of each calendar year the executive secretary of the board shall send a notice to each veterinarian who holds a license to practice veterinary medicine in the state, whether resident or not, at that person's last address, that the annual renewal registration fee is due on or before the first day of July.

The executive secretary of the board shall issue a certificate of registration upon the payment of the required fee and publish biennially for proper distribution a roster of all veterinarians registered in the state of North Dakota, as soon as the registration for each two-year period is completed, to the board. The application must show the applicant is a graduate of an accredited or approved college of veterinary medicine or the holder of a certificate. The application must also show the applicant is a person of good moral character and any other information and proof the board may require. The application must be accompanied by a fee in the amount established by the board. If the board determines an applicant possesses the proper qualifications, the board shall admit the applicant to the next examination. If the applicant is eligible for license without examination under section 43-29-07.2, the board may grant the applicant a license. If an applicant is found not qualified to take the examination or for a licensee without examination, the board shall immediately notify the applicant in writing of this finding and the grounds of this finding. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

2. Each veterinarian licensed by the board, whether a resident or not, shall notify the secretary of any change in that person's office address or employment within sixty days after ~~such~~ the change has taken place. Any person licensed to practice veterinary medicine after the fifteenth day of April, or any person issued a temporary permit to practice veterinary medicine after that date, is exempt from this requirement to pay the annual registration fee until the first day of July of the year following licensure.
3. Registration ~~must be deemed~~ is a condition precedent to the practice of veterinary medicine and surgery in this state, and a certificate of registration currently in effect must be on display at all times in the office of each veterinarian engaged in active practice.

~~Any person registered under this chapter who may have forfeited his registration by nonpayment of fees may renew the same within one year without examination by paying such fees.~~

~~The board may by rule waive the payment of the registration fee of a licensed veterinarian during the period when the veterinarian is on active duty in connection with any branch of the armed forces of the United States, not to exceed the term of three years or the duration of the national emergency, whichever last occurs.~~

SECTION 5. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Examination - License without examination - Temporary permit.

1. The board shall hold at least two examinations a year and may hold additional examinations as necessary. A person desiring to take an examination shall apply at least thirty days before the date of the examination. The board shall adopt rules governing preparation, administration, and grading of examinations. Examinations must be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to prove competency to practice veterinary medicine in the judgment of the board. An examinee must be tested by written examination, supplemented by any oral interview and practical demonstration the board determines necessary. The board may adopt and use the examination prepared by the national board examination committee. After each examination, the board shall notify each examinee of the result of the examination, and the board shall issue a license to each person who passed the examination. The board shall record each new license and issue a certificate of registration to each new licensee. Any person failing an examination must be admitted to any subsequent examination on payment of the application fee.
2. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof of graduation from an accredited or approved college of veterinary medicine, or holds a certificate, and who:
 - a. Has for the five years immediately before filing of the application been a practicing veterinarian licensed in a state having license

- requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this chapter;
- b. Has within the three years immediately before filing the application successfully completed the examinations provided by the national board of veterinary medical examiners; or
 - c. Currently holds a license to practice in at least one state, has active diplomat status in a specialty organization recognized by the American veterinary medical association, and whose practice is limited to the certified specialty in the state in which the specialist is licensed without examination.
3. The board may issue without examination a temporary permit to practice veterinary medicine in this state to:
- a. A qualified applicant for license pending examination, if the temporary permit expires the day after the notice of results of the first examination given after the permit is issued. A temporary permit may not be issued to an applicant who previously has failed the examination in this or any other state or a foreign country.
 - b. A nonresident veterinarian validly licensed in another state or a foreign country who pays the fee established and published by the board if the temporary permit is issued for a period of no more than sixty days and no more than one permit is issued to a person during each calendar year.
 - c. A senior veterinary student who practices in the office of and under the direct supervision of a licensed veterinarian. A temporary student permit may not exceed six months from its date of issuance and is granted without payment of a fee.

SECTION 6. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

License renewal - Continuing education requirements.

1. All licenses expire annually as of July first but may be renewed by registration with the board and payment of the registration renewal fee established by the board. On June first of each year, the board shall mail a notice to each licensed veterinarian that the licensee's license will expire as of July first and provide the licensee with a form for registration. The board shall issue a new certificate of registration to a person reregistering under this section. Any person who willfully or by neglect fails to renew a license and who practices veterinary medicine after the expiration of the license is practicing in violation of this chapter.
2. Any qualified person may renew an expired license within two years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After two years have elapsed since the date of expiration, a license may not be renewed, but the holder may make application for a new license and take the license examination. The board may by rule waive the payment of the registration renewal fee of a licensed veterinarian during the period when the veterinarian is on active duty with any branch of the

armed services of the United States, not to exceed the longer of three years or the duration of active duty.

3. The board may adopt rules establishing requirements for the continuing education of veterinarians and veterinary technicians. The board may refuse to renew or may suspend, revoke, or place on probationary status any license issued under this chapter upon proof the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 7. AMENDMENT. Section 43-29-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-09. Permit to practice issued by executive secretary of board - Limited specialty license - Graduate veterinary technicians. Any person who desires to practice veterinary medicine, surgery, or dentistry may apply to the executive secretary of the board for a temporary permit to practice if the applicant possesses a degree or diploma showing the applicant to be a graduate of the veterinary course offered in a veterinary school, college, or university recognized by the board. Upon the payment of fifty dollars by the applicant, twenty-five dollars must be applied toward the examination fee and is forfeited if the applicant fails to appear at the next scheduled examination. No temporary permit may be issued to any applicant who has previously failed the examination. The executive secretary, if satisfied that the applicant is a qualified and a suitable person, and with the approval of the president of the board, shall issue a permit to practice until the next examination is offered by the board. The permit has the same force as a certificate from the board, but expires upon the adjournment of the next meeting of the board at which an examination is held.

A senior veterinary student who practices in the office of, and under the direct supervision of, a licensed veterinarian must obtain a temporary permit to practice veterinary medicine in this state. A temporary student permit may not exceed four months from its date of issuance and is granted without payment of a fee.

1. The board may issue a limited specialty license for the practice of that specialty in this state to a veterinarian, licensed in another state, who has passed a nationally recognized specialty board exam and who otherwise meets the qualifications to practice in this state. All limited specialty licenses regardless of when issued, expire on June thirtieth of each year and may be renewed in the discretion of the board. All veterinarians holding a limited specialty license are subject to this chapter during the term of the license. Fees for a limited specialty license are the same as for a regular license.
2. The board shall ~~shall~~ may adopt rules for the training, certification, and limits of activity for veterinary assistants and shall adopt rules for the licensing, training, certification, and limits of activity for veterinary technicians being trained and employed under the direct supervision and responsibility of a licensed veterinarian. All veterinary technicians must be registered with and subject to requirements established by the board.

SECTION 8. AMENDMENT. Section 43-29-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-13. Practices excepted from provisions of this chapter. The following persons may not be considered to be engaging in the practice of veterinary medicine in this state:

1. Those who administer to livestock, the title to which rests in themselves, or in their regular employer, except where the ownership of the animal was transferred to avoid the requirements of this chapter, or those who perform gratuitous services.
2. ~~Those~~ Anyone who ~~conduct experimentation~~ conducts experiments in scientific research in the development of methods, techniques, or treatment, directly or indirectly applicable to the problems of medicine, and who in connection ~~therewith~~ use with these activities uses animals.
3. ~~Those who are~~ Anyone who is a regular ~~students~~ student in a legally chartered and recognized ~~an~~ accredited or approved college of veterinary medicine; ~~while in the performance of studies and acts performing duties or actions assigned by their instructors an instructor or working under the direct supervision of a licensed veterinarian during a school vacation period.~~
4. ~~Those who are~~ Anyone licensed in another state or nation when engaged in this state in consultation with veterinarians legally practicing herein; ~~providing such consultation does not exceed thirty days in any one year.~~
5. ~~Those who are senior students~~ A senior student who is in an approved school of veterinary medicine and who ~~shall obtain~~ obtains from the board a student permit to practice in the office and under the direct supervision of any veterinarian practicing within this state.
6. ~~Those who are employees~~ Any employee of the United States of America or the ~~this~~ state of ~~North Dakota~~ while in the performance of ~~their~~ duties as ~~such~~ employees.
7. ~~Those selling drugs, medicine, household remedies, or appliances at wholesale or retail and advising as to the use and purpose of such drugs, medicine, household remedies, or appliances.~~ Any merchant or manufacturer selling medicine, feed, an appliance, or any other product used in the prevention or treatment of animal diseases.
8. ~~Those who render auxiliary or supporting assistance under the responsible supervision of a North Dakota licensed veterinarian, such as veterinary aids, nurses, laboratory technicians, interns, or other employees of such licensed practitioners.~~ Any veterinary technician or other employee of a licensed veterinarian performing duties under the direction and supervision of the veterinarian responsible for the technician's or other employee's performance.
9. Any member of the faculty of an accredited college of veterinary medicine performing regular functions or a person lecturing or giving instructions or demonstrations at an accredited college of veterinary medicine or in connection with a continuing education course or seminar.
10. Any person selling or applying any pesticide, insecticide, or herbicide.

11. Any graduate of a foreign college of veterinary medicine who is in the process of obtaining a certificate and is performing duties or actions assigned by the graduate's instructors in an accredited or approved college of veterinary medicine.

SECTION 9. AMENDMENT. Section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

43-29-14. Refusal, suspension, and revocation of license and certificate - Reinstatement and relicense.

1. The state board of veterinary medical examiners may ~~either~~ refuse to issue a license or ~~refuse to issue~~ a certificate of registration, or may suspend, or revoke a license and certificate of registration, upon any of the following grounds:
 1. a. Fraud or deception in procuring the license.
 2. b. ~~The publication or use of any untruthful or improper statement, or representation, with a view of deceiving the public, or any client or customer in connection with the practice of veterinary medicine advertising or solicitation that is false, misleading, or otherwise determined unprofessional under rules adopted by the board.~~
 3. c. Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.
 4. d. Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.
 5. e. ~~Gross malpractice, including failure to furnish to the board, upon written application by it, any report or information relating thereto. Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.~~
 6. f. ~~The employment~~ Employment of unlicensed persons to perform work ~~which~~ that under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.
 7. g. Fraud or dishonest conduct in applying or reporting diagnostic biological tests, inspecting foodstuffs, or in issuing health certificates.
 8. h. Failure of the licensee to keep the premises and equipment used in the licensee's practice in a reasonably clean and sanitary condition; and failure to use reasonably sanitary methods in the practice of veterinary medicine.
 9. i. Violation of the rules ~~as duly promulgated~~ adopted by the board ~~in accordance with the law~~.
 10. j. Conviction of an offense determined by the board to have a direct bearing upon a persons ability to serve the public as a veterinarian, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

44. k. Willful or repeated violations of any provisions of this chapter or any of the rules of rule adopted by the board.
- l. Failure to report, as required by law, or making false report of, any contagious or infectious disease.
- m. Cruelty to animals.
- n. Revocation of a license to practice veterinary medicine by another state on grounds other than nonpayment of a registration fee.
- o. The use, prescription, or sale of any veterinary prescription drug, or the prescription or an extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship.
2. Any person whose license has been revoked may apply to the board for reinstatement and relicensure one year after the date of revocation. The board may reissue a license if the board is satisfied the applicant is qualified to practice veterinary medicine, meets the existing requirements for licensure, and will comply with the rules regarding the practice of veterinary medicine.

SECTION 10. AMENDMENT. Section 43-29-15 of the North Dakota Century Code is amended and reenacted as follows:

43-29-15. Hearing on charges Complaints - Appeal Investigations.

1. Any person may prefer charges on any of the grounds as set forth in subsections 4 to 11 of section 43-29-14 by filing file a written complaint with the board in writing a sworn statement setting forth the specific charges upon which the complaint is made. Upon receiving any such a complaint, the board shall give at least twenty days notice to the person complained about of the time and place for hearing thereon, together with a copy of the complaint filed, and after hearing all evidence and testimony presented thereon, the board has the power to revoke, or suspend for a limited time, the license and registration certificate of any registrant found guilty by the board of improper conduct on any of the grounds as set forth in subsections 4 to 11 of section 43-29-14. Any licensee whose license has been revoked by the board may within thirty days thereafter upon written notice to the board appeal to the district court in the county of the licensees residence for a hearing de novo of the charges on which his license was revoked. The licensee has the right at any such hearing to be represented by counsel, to call witnesses, and to cross-examine adverse witnesses. Any appeal regarding a limited specialty license must be made to the Burleigh County district court.

Any person whose license has been revoked may apply to the board for reinstatement and relicensure, and if the board is satisfied that such conduct will be discontinued may reissue a license to such person notify the veterinarian of the complaint and request a written response from the veterinarian. The board may adopt rules establishing a peer review committee for the purpose of investigating complaints and providing recommendations to the board. A veterinarian 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 records when reasonably requested by the board.

2. To pursue the investigation, the board may subpoena and examine witnesses and records, including medical records, copy, photograph, or take samples. The board may require the veterinarian 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 it appears to be in the best interest of the public that this evaluation be secured. After review of the complaint, the veterinarian's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines there is a reasonable basis to believe the allegations are true and the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall notify the complaining party and the veterinarian in writing.

SECTION 11. AMENDMENT. Section 43-29-16 of the North Dakota Century Code is amended and reenacted as follows:

43-29-16. Proceedings on revocation or suspension of license - Appeals - Costs of prosecution - Disciplinary proceedings.

1. All proceedings relative to the issuance, revocation, or suspension of a license, or relative to reissuing a license which that has been revoked may only be held when a majority of the members of such board are present at such hearings, and throughout such hearings a stenographer must be present and take down the testimony and preserve a record of all proceedings at the hearing. The complaint, notice of hearing, proof of service of notice of hearing, which proof must show that such notice was personally served upon the party against whom the complaint is made, and all other documents in the nature of pleadings and written motions filed in the proceedings, and all written documents presented in evidence, and the transcript of testimony, and the findings of the board on such hearing, constitute the record of such proceedings. Either party to the action may require that any of the matters filed with the board be presented to the district court to whom the case is appealed de novo must be conducted pursuant to chapter 28-32. An appeal from the final decision of the board in any matter covered by this chapter may be taken to the district court of Burleigh County or the aggrieved party's county of residence in accordance with chapter 28-32.
2. In any order or decision issued by the board in which disciplinary action is imposed against a licensee, the board may direct the licensee to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the licensee's license may be suspended until the costs are paid to the board.

SECTION 12. REPEAL. Sections 43-29-08 and 43-29-12 of the North Dakota Century Code are repealed.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 377

HOUSE BILL NO. 1134

(Industry, Business and Labor Committee)

(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATOR LICENSING AND CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to continuing education requirements for private investigative and security officers; and to amend and reenact sections 43-30-06, 43-30-10, 43-30-12, 43-30-13, and 43-30-16 of the North Dakota Century Code, relating to injunctive power of the private investigative and security board, disciplinary action, disciplinary hearing, and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-06 of the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License applications. Every person who desires to obtain a license shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license, the board may require each applicant for certification to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

SECTION 2. AMENDMENT. Section 43-30-10 of the North Dakota Century Code is amended and reenacted as follows:

43-30-10. Penalty - Injunction. Any person who violates this chapter or any person who falsely states or represents that the person has been or is an investigative officer or employed by an investigative or security officer or agency is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person.

SECTION 3. AMENDMENT. Section 43-30-12 of the North Dakota Century Code is amended and reenacted as follows:

43-30-12. Revocation or refusal to renew Disciplinary action. The board may ~~either refuse to renew or may~~ suspend ~~or may~~, or revoke a license, or place on probationary status any licensee, or issue a letter of reprimand to any licensee, for any one or any combination of the following causes:

1. Fraud in obtaining a license.
2. Violation of this chapter or rules adopted which implement section 43-30-04.
3. If the holder of any license or a member of any copartnership, an officer of any corporation, or a manager of any limited liability company has been adjudged guilty of the commission of an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as a private investigative or security agency, or if the board determines that, following conviction of any offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Upon the disqualification or insolvency of the surety of the licenseholder.

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, 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.

SECTION 4. AMENDMENT. Section 43-30-13 of the North Dakota Century Code is amended and reenacted as follows:

43-30-13. Notice and hearing on license revocation. The board may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute ~~grounds for refusal, suspension, or revocation, as herein set forth~~ a violation of this chapter or rules adopted by the board, investigate the actions of any person holding or claiming to hold a license. The board shall, before refusing to issue, suspending, ~~or~~ revoking ~~any license, at least ten days before the date set for the hearing, or taking any other licensure action,~~ notify in writing the applicant or holder of ~~such~~ the license of any charges made and shall afford the accused person an opportunity to be heard in person or by counsel in reference thereto. The written notice may be served by personal delivery to the accused person, or by registered mail to the place of business specified by the accused person in the person's last notification to the board. At the time and place fixed in the notice, the board shall proceed to hearing of the charges and both the accused person and the complainant must be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The board may continue ~~such~~ the hearing from time to time.

SECTION 5. AMENDMENT. Section 43-30-16 of the North Dakota Century Code is amended and reenacted as follows:

43-30-16. Examination and license fees. The board may charge the following fees:

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services is ~~fifty~~ one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services is one hundred fifty dollars.

3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency is ~~fifty~~ one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency is ~~two~~ three hundred dollars.
4. ~~5.~~ The one-time fee to be paid by an applicant for the issuance of a private security training certificate is ~~five~~ twenty-five dollars.
5. ~~6.~~ The annual fee to be paid by an applicant for the issuance of an armed private security certificate is ~~five~~ twenty-five dollars.
6. ~~7.~~ The fee to be paid for the issuance of a duplicate license is ~~ten~~ twenty dollars.
8. The initial registration fee to provide private investigative service or private security service is twenty dollars. The fee for the renewal of a registration to provide private investigative service or private security service is five dollars.

SECTION 6. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board may adopt rules establishing the requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, or revoke any license issued under this chapter or place on probationary status any licensee on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee as determined by the board.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 378

SENATE BILL NO. 2113

(Human Services Committee)

(At the request of the Board of Psychologist Examiners)

PSYCHOLOGIST LICENSING AND DISCIPLINE

AN ACT to create and enact five new sections to chapter 43-32 of the North Dakota Century Code, relating to powers of the board of psychologist examiners, investigations, licensure renewal, and disciplinary hearings; to amend and reenact sections 43-32-01, 43-32-02, 43-32-03, 43-32-05, 43-32-08.1, 43-32-13, 43-32-14, 43-32-16, 43-32-19, 43-32-20, 43-32-21, 43-32-27, 43-32-29, and 43-32-30 of the North Dakota Century Code, relating to the board of psychologist examiners, licensure and regulation of psychologists, continuing education, and client records; and to repeal sections 43-32-18 and 43-32-28 of the North Dakota Century Code, relating to licensing of psychologists without examination and disciplinary hearings.

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. "Board" means the North Dakota state board of psychologist examiners.
2. "Practice of psychology" means the observation, description, evaluation, interpretation, ~~and~~ 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 ~~of~~ 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, 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 ~~the rendering of~~ providing psychological services to individuals, families, groups, and the public ~~and is without regard to~~ regardless of whether payment is received for services rendered.
3. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.
4. "Psychology resident" means an individual who has received from an accredited school or college a doctorate degree in a program of study substantially psychological in nature, and who is involved in supervised psychological employment.

5. "School or college" means any university or other institution of higher learning that is accredited by a regional accrediting association, offering a full-time graduate course of study in psychology.

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 five members; ~~each of whom.~~ At least one member must be engaged primarily in providing service in psychology, and at least one member must be engaged primarily in teaching, training, or research in psychology. Each member must have the following qualifications:

1. Be a resident of this state.
2. ~~After the first five appointments, must be~~ Be a licensed psychologist licensed under this chapter.
3. ~~Has, at least five years prior to appointment,~~ Have received a doctorate degree in psychology from a school or college ~~as defined in this chapter at least five years before appointment.~~
4. ~~Has been~~ Have actively engaged in the practice of teaching or research of psychology for a ~~period of~~ at least five years.
5. ~~As to at least one member, is currently engaged primarily in rendering service in psychology and as to at least one member, is engaged primarily in teaching, training, or research in psychology.~~

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

43-32-03. Tenure of members - Vacancies and oath of office. ~~After the first five appointments, the~~ The term of office of each member of the board ~~must be~~ is three years and until ~~his~~ a successor is appointed and qualified. ~~The terms of the first members of the board expire as follows: one member, June 30, 1968; two members June 30, 1969; and two members June 30, 1970.~~ The governor shall fill all vacancies by appointment ~~but in.~~ In case of a vacancy before the expiration of a term, the appointment must be for the ~~residue~~ remainder of the term only. A person appointed to the board ~~shall qualify~~ qualifies by taking the oath required of civil officers.

SECTION 4. 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 thereof. Each member of the board ~~shall serve~~ serves without compensation, but ~~he~~ shall is entitled to receive ~~such~~ mileage and travel expenses while engaged in the performance of ~~the board~~ his duties ~~of his office~~ as ~~is~~ provided in section 54-06-09. The secretary of the board ~~shall~~ is entitled to receive ~~such~~ salary or other compensation; and ~~such~~ allowance for clerical and other expenses of the board, as the board ~~shall~~ determine determines.

SECTION 5. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

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

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 psychologists. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter if the licensee fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 7. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Complaints - Investigations.

1. A person aggrieved by the actions of a psychologist licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the psychologist. The board shall notify the psychologist of the complaint and request a written response from the psychologist.
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. A psychologist 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 an investigation, the board may subpoena and examine witnesses and records, including patient records, and copy, photograph, or take samples. The board may require the licensed psychologist 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 records released to the board are not public records.
5. Unless a patient release is on file allowing the release of information at the public hearing, patient records acquired by the board in its investigation are confidential and closed to the public. All board meetings 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 8. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and fee. ~~On or before~~ Before January first of each year, every licensed psychologist in the state shall pay to the secretary of the board an annual license fee ~~to be determined by regulation of the board~~ not to exceed one hundred dollars. The secretary of the board, upon payment of the annual license fee by a person licensed under this chapter, shall issue a certificate of annual license. ~~No~~ A person may not hold ~~himself~~ oneself out as a licensed psychologist until the annual license fee ~~has been~~ is paid. ~~The violation~~ the board shall revoke the license of a person who violates this section is cause for revocation of his license by the board. ~~The~~ Annually, the board shall annually mail a renewal notice to all licensed psychologists at the 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 license fees - Reinstatement. ~~Any~~ A person who has been a licensed psychologist in this state under ~~the provisions of this chapter;~~ and ~~who~~ whose license has had his license been revoked because of his for failure to pay the annual license fee; must be reinstated and his the license renewed by his paying if within one year from the date of revocation the person pays to the secretary of the board the amount of the annual license fees in which he is then in default and a late fee in the amount of twenty dollars.

SECTION 10. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements - Renewal. Absent a showing of good cause, the board may not renew a license issued under this chapter without proof the continuing education requirements established by rule of the board have been met. A person whose license is not renewed because of failure to meet the continuing education requirements must be reinstated and the license renewed if, within one year from the date of nonrenewal, the person demonstrates to the secretary of the board the continuing education requirements have been satisfied and pays the renewal fee and a late fee to be determined by rule of the board.

SECTION 11. 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 which must show:
 - a. The name, age, and residence of each applicant.
 - b. The date of ~~the~~ each applicant's application.
 - c. The place of business of ~~such~~ each applicant.
 - d. A summary of the educational and other qualifications of ~~such applicants~~ each applicant.
 - e. Whether ~~or not~~ an examination was required of an applicant.
 - f. Whether ~~or not~~ a license was granted to an applicant.
 - g. The date of the action of the board.

- h. ~~Such other~~ Any information as may be deemed the board determines necessary or advisable by the board in aid of the above requirements of this subsection.
2. ~~The~~ Except as otherwise provided by law, the records of the board are public records and evidence of the proceedings of the board set forth therein, and a transcript thereof of board proceedings, duly certified by the secretary of the board, bearing the seal of the board, is admissible in evidence with the same force and effect as if the original were produced.

SECTION 12. AMENDMENT. Section 43-32-19 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19. Licensing of psychologists from other states. Upon application ~~and~~ accompanied by the required fee, the board ~~may~~, without written or oral examination, may issue a license to any person who at the time of application furnishes evidence satisfactory to the board that ~~he~~ the applicant is licensed or certified as a psychologist by a similar board of another state whose standards, in the opinion of the board, are not lower than those required by this chapter.

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 issue a license ~~as a psychologist~~ to each applicant who files an application upon a form and in ~~such~~ a manner ~~as~~ the board prescribes, ~~accompanied by~~ submits the required fee, and who ~~furnishes evidence~~ demonstrates to the board that ~~he~~ the applicant:

1. ~~Is of good moral character~~ Will adhere to the American psychological association ethical principles of psychologists and code of conduct, 1992, or revised editions if adopted by the board by rule.
2. ~~Is not found by the board to be engaged in unethical practices.~~
3. Has received from an accredited school or college as defined by this chapter a doctorate; ~~with~~ degree in a program of studies substantially psychological in nature.
4. ~~3.~~ Demonstrates professional competence as shown by passing such ~~Has passed the~~ examinations, written or oral, or both, as the board deems necessary.
5. ~~4.~~ Has not, within the preceding six months, failed an examination given completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which must be postdoctoral. Both years of experience must comply with the board's rules.

SECTION 14. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Postdoctoral supervised psychological employment.

1. Supervision may only be performed by a licensed psychologist with a competency in supervision in professional psychology in the area of practice being supervised.
2. Supervision of an applicant for licensure as a licensed psychologist must include at least two hours of regularly scheduled direct supervision a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis. The remaining hour may be with other mental health professionals designated by the supervisor. The board may approve an exception to the weekly supervision requirement for a week when the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for persons preparing for licensure on a part-time basis.
3. The board may adopt rules regarding supervision requirements and reporting.

SECTION 15. AMENDMENT. Section 43-32-21 of the North Dakota Century Code is amended and reenacted as follows:

43-32-21. Consideration of application and notice to applicant. Upon investigation of the application and other evidence submitted, the board ~~shall~~, not less than thirty days ~~prior to~~ before the examination, shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, ~~said~~ the notice must state the reasons for ~~such~~ rejection and explain the right to a hearing under chapter 28-32, if a hearing is requested within thirty days.

SECTION 16. 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 - Grounds.

1. The board, after notice and hearing and by an affirmative vote of at least ~~three of its five~~ a majority of board members, ~~shall~~ may withhold, deny, revoke, or suspend any psychologist license issued or applied for ~~in accordance with the provisions of~~ under this chapter, or otherwise discipline a licensed psychologist, upon proof ~~that~~ the applicant or licensed psychologist:
 4. a. Has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a psychologist, or ~~where~~ when the board ~~determines~~ finds, ~~following after the conviction of any offense,~~ that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
 2. b. Is using any narcotic or ~~any~~ alcoholic beverage to an extent or in a manner dangerous to ~~himself~~ the psychologist, any other person, or the public, or to an extent that ~~such~~ the use impairs ~~his~~ the psychologist's ability to perform the work of a professional psychologist with safety to the public.
 3. c. Has impersonated another person holding a psychology license or allowed another person to use ~~his~~ the psychologist's license.

4. d. Has used fraud or deception in applying for a license or in taking an examination ~~provided for in~~ under this chapter.
5. e. Has allowed ~~his~~ the psychologist's name or license issued under this chapter to be used in connection with any person ~~or persons~~ who ~~perform~~ performs psychological services outside of the area of their that person's training, experience, or competence.
6. f. Is legally adjudicated insane or mentally incompetent; ~~the.~~ The record of ~~such the~~ adjudication ~~being~~ is conclusive evidence ~~thereof~~ of that fact.
7. g. Has engaged in any form of unethical conduct as defined in "Ethical Standards for Principles of Psychologists and Code of Conduct" as adopted and published by the American psychological association, ~~1953~~ 1992, ~~and as~~ or revised editions if adopted by the board by rule.
8. h. Has become grossly negligent in the practice of ~~his~~ the profession.
9. i. Has willfully or negligently violated ~~any of the provisions of~~ this chapter.
- j. Has engaged in an act in violation of rules adopted by the board.

~~The suspension by the board of the license of a psychologist must be for a period not exceeding one year.~~

2. A person ~~who has been refused a license, or~~ whose license has been revoked; ~~under the provisions of this section;~~ may reapply for licensing after two years have elapsed from the date of ~~such denial or~~ revocation.

SECTION 17. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Hearing. All hearings must be conducted pursuant to chapter 28-32. For purposes of a hearing, the licensee or applicant is the sole party in interest under section 28-32-08 and section 28-32-05 applies only to the licensee or applicant.

SECTION 18. AMENDMENT. Section 43-32-29 of the North Dakota Century Code is amended and reenacted as follows:

43-32-29. Appeal from decision of board. An appeal from the final decision of the board in any matter covered by this chapter may be taken to the Burleigh County district court ~~of or~~ the aggrieved party's county in which the decision was made of residence in accordance with ~~the provisions of~~ chapter 28-32.

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 the provisions of this chapter. ~~The provisions of this~~ This chapter ~~de~~ does not apply to ~~the following:~~

1. Any person in the employ of any federal, state, county or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the

activities and services of the person are a part of the duties of the person's office or position with such agency, nonprofit corporation or institution. This exemption is not available or effective after July 1, ~~1970~~ 1999. However, the exemption period may be extended by the board in individual cases where hardship or other good cause is shown by the agency, nonprofit corporation or institution covered, or where the person affected has received from a school or college a master's degree in psychology and the person's activities and services with such agency, nonprofit corporation or institution are performed under the supervision of a licensed psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.

2. A student, or intern, or resident in psychology pursuing a course of study in psychology at a school or college, if ~~such~~ the activities and services ~~constitute~~ are a part of the person's supervised course of study if, provided the ~~person~~ student or intern does not use the title "psychologist" and the student, or intern, or resident status is clearly stated.
3. A nonresident, ~~duly~~ licensed or certified in the state of the person's residence who does not practice psychology in this state for a period of more than thirty days in any calendar year.
4. 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 unless the lecturer is licensed to practice psychology in this state.
5. ~~Any~~ A person ~~who~~ is employed by a public school and whose activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only when the person 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.
6. A person ~~who~~ is certified, licensed, or registered in this state in another health care profession, whose scope of practice is consistent with the accepted standards of that person's profession, and who does not represent to be rendering psychological services.
7. An applicant licensed to practice psychology in another jurisdiction, pending disposition of the applicant's application, 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.
8. A person employed by an agency, nonprofit corporation, or institution who is currently exempt from licensure 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.
9. A psychologist resident performing services supervised as provided under section 14 of this Act.

SECTION 20. REPEAL. Sections 43-32-18 and 43-32-28 of the North Dakota Century Code are repealed.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 379

HOUSE BILL NO. 1161

(Human Services Committee)

(At the request of the North Dakota Board of Social Work Examiners)

SOCIAL WORK LICENSING AND FEES

AN ACT to create and enact a new section to chapter 43-41 of the North Dakota Century Code, relating to fees charged by the North Dakota board of social work examiners; to amend and reenact subdivision e of subsection 2 of section 26.1-36-09, and sections 43-41-01, 43-41-04, 43-41-05, 43-41-10, and 43-41-12 of the North Dakota Century Code, relating to group health policy and health service contract mental disorder coverage and social work licensures; and to repeal sections 43-41-06 and 43-41-12.1 of the North Dakota Century Code, relating to licensing requirements for social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subdivision e of subsection 2 of section 26.1-36-09 of the North Dakota Century Code is amended and reenacted as follows:

- e. (1) In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of thirty hours for services covered under this section in any calendar year if the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health or if the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified independent clinical social worker ~~who~~:
 - (a) ~~Possesses a master's or doctorate degree in social work from an institution accredited by the council of social work education;~~
 - (b) ~~Has at least one year of direct clinical social work practice during graduate school or one year of postgraduate supervised clinical social work practice in a structured teaching environment;~~
 - (c) ~~Has completed at least the equivalent of four years of full-time supervised clinical social work experience within the last seven years;~~

¹ Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2040, chapter 255.

- (d) ~~Has passed the clinical examination or its equivalent offered by the North Dakota board of social work examiners; and~~
 - (e) ~~If not licensed in this state, is licensed, certified, or registered at the highest level of social work practice in another state.~~
- (2) A person who is qualified for third-party payment by the board of social work examiners on August 1, ~~1995~~ 1997, is exempt from ~~subparagraphs e and d~~ paragraph 1 of this subdivision. ~~Supervision under subparagraph e may be provided by a qualified clinical social worker, a licensed psychologist, or a licensed psychiatrist, but the preferred supervisor is the qualified clinical social worker.~~

SECTION 2. AMENDMENT. Section 43-41-01 of the North Dakota Century Code is amended and reenacted as follows:

43-41-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of social work examiners.
2. "Licensed certified social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
3. "Licensed independent clinical social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure or has been registered by the board for third-party reimbursement before August 1, 1997.
4. 4. "Licensed social worker" means an individual who has a baccalaureate degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
4. 5. "Private practice of social work" means the independent practice of social work 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 an agency are not considered to be the private practice of social work.
5. 6. Social work practice consists of the professional application of social work values, principles, and techniques in: helping people obtain tangible services; counseling; psychotherapy with individuals, families, and groups; helping communities or groups to improve social and health services; providing social casework; directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

SECTION 3. AMENDMENT. Section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04. Licenses.

1. Except as otherwise provided in this chapter, no person may engage in social work practice in this state unless that person is a licensed social worker or a licensed certified social worker.
2. The board shall issue a license as a licensed social worker to an applicant who:
 - a. Has a baccalaureate degree in a social work or social welfare program approved by the board from a college or university accredited by the council on social work education.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
3. The board shall issue a license as a licensed certified social worker to an applicant who:
 - a. Has a doctorate or master's degree from a school of social work accredited by the council on social work education.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
4. The board shall issue a license as a licensed independent clinical social worker to an applicant who:
 - a. Has a doctorate or master's degree from a school of social work accredited by the council on social work education.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant has successfully completed four years of full-time, post-master's clinical social work experience under the supervision of a licensed certified social worker who has two years of experience, a licensed clinical psychologist, or a licensed psychiatrist. This requirement must be waived if the applicant was approved by the board for third-party reimbursement or certified for private practice before August 1, 1997.
 - d. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.

SECTION 4. AMENDMENT. Section 43-41-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-41-05. Private practice of social work. ~~No~~ A person may not engage in the private practice of social work unless that person: has been licensed by the board as a licensed independent clinical social worker or was certified to practice privately by the board before August 1, 1997.

- ~~1. Is licensed under this chapter as a licensed certified social worker.~~
- ~~2. Has had three years of post master's experience under the supervision of a licensed certified social worker or a social worker who is eligible for licensure as a licensed certified social worker.~~
- ~~3. Has passed the clinical examination or its equivalent offered by the board.~~
- ~~4. Is registered with the board as eligible for private practice under criteria as may be established by board rule.~~

SECTION 5. AMENDMENT. Section 43-41-10 of the North Dakota Century Code is amended and reenacted as follows:

43-41-10. Grounds for disciplinary proceedings. The board may deny, 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 licensed person:

1. Has been convicted of an offense determined by the board to have a direct bearing upon that individual's ability to practice social work ~~and~~ or is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
2. Is addicted to the habitual use of alcoholic beverages, narcotics, or stimulants to such an extent as to incapacitate that individual from the practice of social work.
3. Has been grossly negligent in the practice of social work.
4. Has violated one or more of the rules and regulations of the board.
5. Has violated the code of social work ethics adopted by the board.
6. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including client records, and copy, photograph, or take samples. The board may require a licensed social worker to give statements under oath and 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 an evaluation be secured. A written request from the board constitutes authorization to release information. ~~All~~ Absent a client release on file allowing the release of information, all client records released to the board are confidential and ~~not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota~~ are not public records.
7. Unless there is a client release on file allowing the release of information at the public hearing, ~~all data and information, including client and juvenile records, acquired by the board in its investigation~~ are introduced or client and juvenile testimony of a personal nature taken at

a public hearing is confidential and closed to the public. ~~All~~ The portions of board meetings where client and juvenile testimony or records are taken or ~~revised~~ reviewed are confidential and closed to the public. If no client or juvenile testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 6. AMENDMENT. Section 43-41-12 of the North Dakota Century Code is amended and reenacted as follows:

43-41-12. Renewal of licenses.

1. All licenses are effective when issued by the board.
2. All licenses of licensed social workers and licensed certified social workers expire on December 31, 1985, and on December thirty-first every two years thereafter.
3. A license may be renewed by payment of the renewal fee set by the board, provided the applicant's license is not currently revoked or suspended.
4. If the application for renewal is not received ~~within six months of~~ on or before the expiration date, the ~~board shall require reexamination~~ license expires and the person may not practice social work until the license is renewed.
5. 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.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory proof of completion of the continuing education requirements, the applicant may renew the license within six months after the expiration of the previous license upon payment to the board of the amount of the renewal fee and by presenting satisfactory proof that the continuing education requirements have been met. The board may also charge a late fee. If a license is not renewed within six months after the expiration of the license, a new application for licensure must be made.

SECTION 7. A new section to chapter 43-41 of the North Dakota Century Code is created and enacted as follows:

Fees. The board shall set by rule all fees authorized by this chapter. The fees may not exceed the following amounts:

- | | |
|---------------------------|-----------------|
| 1. <u>Application fee</u> | <u>\$ 50.00</u> |
| 2. <u>License fee</u> | <u>\$150.00</u> |
| 3. <u>Renewal fee</u> | <u>\$100.00</u> |
| 4. <u>Late fee</u> | <u>\$300.00</u> |

SECTION 8. REPEAL. Sections 43-41-06 and 43-41-12.1 of the North Dakota Century Code are repealed.

Approved March 27, 1997

Filed March 27, 1997

CHAPTER 380

HOUSE BILL NO. 1160

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

COUNSELING PRACTICE AND LICENSING

AN ACT to create and enact three new sections to chapter 43-47 of the North Dakota Century Code, relating to the authority of the board of counselor examiners to appoint or employ persons, payment of delinquent license fees, and unauthorized practice of counseling; to amend and reenact sections 43-47-01, 43-47-03, 43-47-06, and 43-47-08 of the North Dakota Century Code, relating to definitions, duties, responsibilities, license qualifications, and complaints and investigations applicable to the board of counselor examiners; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-47-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-47-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the board of counselor examiners.
2. "Counseling" means assisting an individual, group, or family to develop understanding of intrapersonal and interpersonal problems; to define and set goals, make decisions, and plan a course of action reflecting the needs, interests, and abilities of the person or persons; and to use informational and community resources as needed for personal, social, educational, and vocational development and adjustment the application of human development and mental health principles in a therapeutic process and professional relationship to assist individuals, couples, families, and groups in achieving more effective emotional, mental, marital, family, and social or educational development and adjustment. The goals of professional counseling are to:
 - a. Facilitate human development and adjustment throughout the life span;
 - b. Prevent, assess, and treat emotional, mental, or behavioral disorder and distress which interferes with mental health;
 - c. Conduct assessments for the purpose of establishing treatment goals and objectives; and
 - d. Plan, implement, and evaluate treatment plans using professional counseling strategies and interventions.
3. "Counselor" means a person who has been granted either a professional counselor or associate professional counselor license by the board.

4. "Licensed associate professional counselor" means a person who has been granted an associate professional license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.
5. "Licensed professional counselor" means a person who is trained in counseling; ~~guidance, or human services~~ or a related human service field and has been granted a professional counselor license by the board.

SECTION 2. AMENDMENT. Section 43-47-03 of the North Dakota Century Code is amended and reenacted as follows:

43-47-03. Duties and responsibilities of board. In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Publish an annual list of the names and addresses of all persons licensed under this chapter.
2. Approve and administer an examination for counselors.
3. Set and collect a fee, not to exceed one hundred fifty dollars, for the filing of each application for a license under this chapter and set and collect a fee, not to exceed ~~twenty~~ one hundred dollars, for the renewal of a license under this chapter.
4. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.
5. Establish continuing education requirements for license renewal.
6. Issue provisional or probationary licenses.
7. Establish a code of ethics for the practice of counseling.

SECTION 3. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 4. AMENDMENT. Section 43-47-06 of the 1995 Supplement to 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 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 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 under a licensed professional counselor, or its equivalent as determined by the board;
 - d. Has provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended 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 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 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 when the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar or greater to 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 be extended beyond two years only 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.

7. For a period of two years beginning on July 6, 1989, the board shall issue upon the application of any person a license as a licensed professional counselor if the applicant:
- a. Has received a master's degree that is primarily counseling in content from a regionally accredited institution of higher education;
 - b. Has worked for pay in the counseling field, including counselor education during two of the previous five years;
 - c. Shows evidence of supervision or continued professional growth; and
 - d. Successfully completes an examination approved by the board.

SECTION 5. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Payment of delinquent license fees - Reinstatement. A person who has been licensed under this chapter, and whose license has not been renewed because of the failure to pay the annual license fee, must be reinstated and the license renewed if within one year from the date of nonrenewal the person pays to the secretary of the board the amount of the annual license fee in default and a late fee to be determined by rule of the board.

SECTION 6. AMENDMENT. Section 43-47-08 of the North Dakota Century Code is amended and reenacted as follows:

43-47-08. Complaints - Investigations.

1. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and require a written response from the counselor. Neither the initial complaint nor the counselor's response is public record. The counselor's response must be made available to the complainant.
2. A counselor 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.
3. In order to pursue the investigation, the board may subpoena and examine witnesses and records, including patient records, and copy, photograph, or take samples. It may require the counselor to give statements under oath, submit to a physical or psychological examination, or both, by a physician or physicians or 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. Patient records that are released to the board are not public records.

4. After review of the complaint and, the counselor's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines that there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall so notify the complaining party and the counselor in writing.
5. Unless there is a patient release on file allowing the release of information at the public hearing, patient records acquired by the board in its investigation are confidential and closed to the public. All portions of board meetings wherein 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 7. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. The board may impose a fee against 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, 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.

Approved March 23, 1997
Filed March 24, 1997