OCCUPATIONS AND PROFESSIONS

CHAPTER 356

SENATE BILL NO. 2082

(Political Subdivisions Committee)
(At the request of the Abstracters' Board of Examiners)

ABSTRACTOR CERTIFICATION AND LIMITED ABSTRACTS

AN ACT to create and enact a new section to chapter 43-01 of the North Dakota Century Code, relating to the temporary certification of an abstracter to work in a county that has no certified abstracter; and to amend and reenact sections 43-01-15.1 and 43-01-16 of the North Dakota Century Code, relating to the furnishing of limited abstracts upon request and the cancellation of an abstracter's certificate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request - Zoning and subdivision exclusion upon request. An abstracter shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstracter shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstracter may charge a fee of one dollar and fifty cents, and no more. When requested to do so, an abstracter shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted. Further, when requested to do so, an abstracter shall omit zoning and subdivision ordinances but shall note and exclude them from the abstract of title. An abstracter may charge a per entry fee under section 43-01-18 for each omitted zoning and subdivision ordinance.

SECTION 2. AMENDMENT. Section 43-01-16 of the North Dakota Century Code is amended and reenacted as follows:

43-01-16. Cancellation or denial of certificate - Discipline. The board, after receiving a written and signed complaint alleging a violation of any ground for

discipline under this section and upon thirty days' notice, may require any person, firm, corporation, or limited liability company holding a certificate of authority, or any person holding a certificate as a registered abstracter, to show cause why the same should not be ~~annulled~~ canceled or other disciplinary measures taken. The board may deny an application for a certificate of authority or a certificate of registration for any reason that a certificate of authority or a certificate of registration may be canceled or disciplinary measures taken. A certificate of authority or certificate of registration may be ~~recalled and annulled~~ canceled or disciplinary measures taken, however, only for one or more of the following reasons:

1. Violation of the provisions of this chapter or the board's administrative rules by the holder.

2. If the holder thereof has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as an abstracter, or if, following conviction of an offense, the board finds the holder is not sufficiently rehabilitated under section 12.1-33-02.1.

3. A finding by the board that the holder is guilty of habitual carelessness, inattention to business or unreasonable timeliness of service, or intoxication~~,~~ or the use of drugs to such an extent as to incapacitate the holder for business, including not preparing an abstract as requested under section 43-01-15.1.

4. A finding by the board that the holder is guilty of fraudulent practices.

5. A certificate of authority may be canceled, or other disciplinary measures taken, upon the failure of the holder thereof to provide additional security as provided by section 43-01-12, or upon failure to file an abstracter's liability policy in lieu of any canceled policy, before such cancellation becomes effective, or a surety bond in place thereof.

The board may inspect an abstracter's records to determine compliance with this chapter or rules adopted under this chapter. The board may adopt rules under chapter 28-32 addressing discipline of abstracters, including establishing standards for timeliness of service based on a presumed standard turnaround time of three weeks or less. If the certificate of authority is held by a firm, corporation, or limited liability company, the provisions of this section shall be applicable to the members, officers, or managers thereof. Disciplinary measures that the board may take include canceling or suspending a certificate of authority or certificate of registration, requiring additional education, establishing a mentor or monitor, restricting practice parameters, or imposing a monetary penalty of no greater than five hundred dollars for each violation. In addition, an individual or organization found in violation of the requirements of this section may be assessed costs, including attorney's fees, by the board. An entity whose certificate of authority has been canceled or suspended must surrender all customer abstracts and pending orders to the board immediately upon being notified of the cancellation or suspension. The board shall take reasonable measures to contact the customers.

SECTION 3. A new section to chapter 43-01 of the North Dakota Century Code is created and enacted as follows:

Temporary authority of an abstracter to act in an additional county.

1. If it appears to the board that there is no abstracter authorized to engage in and carry on the business of an abstracter of real estate titles in a county or that there is an authorized abstracter in a county who is unable to perform the duties of an abstracter due to death, disability, a disaster or emergency, or disciplinary action, the board may authorize an individual or organization having a certificate of authority and certificate of registration to operate in another county to operate in the county having no abstracter through the issuance of a temporary certificate of authority. The board may not charge an abstracter for the temporary certificate of authority. The board may require additional security than provided under section 43-01-11. The abstracter operating under the temporary certificate of authority is not required to have a complete set of abstract books or records of all instruments of record in the office of the recorder in and for the county in which the abstracter is temporarily engaged in business, nor need the abstracter have been engaged in the preparation of such books or records. The temporary certificate of authority may not exceed such time as the board has determined an abstracter having a regular certificate of authority and certificate of registration is able to engage in and carry on the business of an abstracter of real estate titles in the county, but the abstracter holding the temporary certificate of authority may complete any work already engaged. The abstracter having a temporary certificate of authority may seek to operate in the county on a regular basis through compliance with all statutory requirements.

2. The board may establish a fund to provide for additional expenses of an abstracter operating under a temporary certificate of authority. The fund may be paid for by an additional fee fixed by the board of no more than fifty dollars per year for each certificate of registration. The fund may not exceed five thousand dollars. The board may pay the expenses, including mileage, meals, and lodging, of an abstracter operating under a temporary certificate of authority at the rates established for state employees on official business.

Approved March 25, 2005
Filed March 25, 2005

CHAPTER 357

SENATE BILL NO. 2026

(Legislative Council)
(Commerce Committee)

CONTRACTOR LICENSURE AND REGULATION

AN ACT to amend and reenact sections 43-07-02, 43-07-04, 43-07-10, 43-07-14, and 43-07-18 of the North Dakota Century Code, relating to licensure and regulation of contractors; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-07-02. License required - ~~Enjoining operation without license~~. ~~No~~ A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two 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 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 North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Failure to grant - Revocation.

1. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of ~~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 North Dakota workforce safety and insurance that the contractor has secured workforce safety and insurance coverage satisfactory to workforce safety and insurance ~~along with such~~. If the registrar deems it appropriate or necessary, the registrar may also require any 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, including, at the expense of the applicant, criminal history record information of the applicant or the officers, members, or partners of the applicant which is held or maintained by the bureau of criminal investigation or a similar entity in another state. The application must contain a statement that the applicant desires the issuance of a license under this chapter and must specify the class of license sought.

2. The registrar may refuse to grant a license if the registrar determines the application contains false, misleading, or incomplete information; the applicant fails or refuses to authorize or pay for criminal history

information requested by the registrar; or as otherwise provided in sections 12.1-33-02.1 and 43-07-04.1. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.

3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:

~~1.~~ a. Maintain liability insurance coverage required by this section or by section 43-07-10;

~~2.~~ b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;

~~3.~~ c. Maintain an active status of a corporation or registration as a foreign corporation;

~~4.~~ d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;

~~5.~~ e. File or renew a trade name registration as required by chapter 47-25;

~~6.~~ f. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or

~~7.~~ g. File or renew a limited partnership or foreign limited partnership.

4. Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering ~~into~~ new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters ~~into~~ new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

SECTION 3. AMENDMENT. Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, 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 unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.

2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.

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

SECTION 4. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license revocation - Consumer fraud action.

1. 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~~ any of the following acts or omissions:

~~1.~~ a. Abandonment of any contract without legal excuse after a deposit of money or other consideration has been provided to the licensee. A rebuttable presumption of abandonment arises if:

~~a.~~ (1) A contractor fails substantially to commence any work agreed upon ~~in writing within~~, unless the failure is due to circumstances beyond the control of the contractor:

(a) Within sixty days of a starting date agreed upon in writing; or

(b) Within ninety days of the contract date if no starting date is agreed upon in writing; or

~~b.~~ (2) A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, or within one hundred eighty days of the contract date if no completion date is agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.

~~2.~~ b. 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.~~ c. Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which one or more persons is injured in a total amount exceeding three thousand dollars.

~~4.~~ d. The making of any false or misleading statement in any application for a license or renewal ~~thereof~~ or by violating ~~any provisions of~~ this chapter or being convicted of an offense the registrar determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor as set out in section 12.1-33-02.1.

~~5.~~ e. Engaging in work without any trade or professional license as required for ~~such~~ the work pursuant to local, state, or federal law.

~~6.~~ f. Failure to ~~fully~~ refund fully the contracting party's advance payment if a rebuttable presumption of abandonment has arisen ~~under subsection 1~~ and the contracting party has made a request to the licensee for a refund.

2. The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable ~~person~~ individual could conclude that ~~one or more~~ any of the ~~above~~ acts or omissions in subsection 1 has been committed.

3. Any act or omission under this section may also constitute grounds for the attorney general to bring an action under chapter 51-15 and subjects the licensee to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

SECTION 5. AMENDMENT. Section 43-07-18 of the North Dakota Century Code is amended and reenacted as follows:

43-07-18. Penalty. Any person acting in the capacity of a contractor ~~within the meaning of this chapter~~ without a license ~~as herein provided~~ is guilty of a class ~~B~~ A misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person ~~makes application~~ applies for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2005
Filed April 20, 2005

CHAPTER 358

HOUSE BILL NO. 1437

(Representatives Koppelman, Dietrich, Haas)
(Senators Espegard, Krebsbach, Nething)

RESIDENTIAL BUILDING DEFECT REPAIR

AN ACT to create and enact a new section to chapter 43-07 of the North Dakota Century Code, relating to notice and time for contractors to repair defects in residential buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-07 of the North Dakota Century Code is created and enacted as follows:

Warranty repairs - Required notice. Before undertaking any repair, other than emergency repair, or instituting any action for breach of warranty in the construction of a one-family or two-family dwelling, or an improvement with a value exceeding two thousand dollars to a dwelling, the purchaser or owner shall give the contractor written notice by mail, within six months after knowledge of the defect, advising the contractor of any defect and giving the contractor a reasonable time to comply with this section. Within a reasonable time after receiving the notice, the contractor shall inspect the defect and provide a response to the purchaser or owner, and, if appropriate, remedy the defect within a reasonable time thereafter. The contractor shall provide the purchaser or owner written notice of the requirements of this section at the time of closing for the property or, in the case of an improvement, at the time of completion of the improvement. For the purposes of this section, "reasonable time" means within thirty business days after the notice is mailed or any shorter period of time as may be appropriate under the circumstances.

Approved April 20, 2005
Filed April 20, 2005

CHAPTER 359

SENATE BILL NO. 2068

(Senator J. Lee)
(Representative Price)
(At the request of the State Board of Medical Examiners)

MEDICAL BOARD MEMBERSHIP AND INVESTIGATIONS

AN ACT to amend and reenact subsection 1 of section 43-17-03 and subsection 1 of section 43-17.1-02 of the North Dakota Century Code, relating to state board of medical examiners membership and investigative panels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The governor shall appoint a state board of medical examiners consisting of ~~eleven~~ twelve members, ~~eight~~ nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.

SECTION 2. AMENDMENT. Subsection 1 of section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of ~~five~~ six members of the board. ~~Four~~ Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board. ~~The president of the board shall serve on neither investigative panel.~~

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 360

SENATE BILL NO. 2266

(Senators Traynor, Andrist, Lindaas)
(Representatives Metcalf, Nicholas)

PHYSICIAN LOAN REPAYMENT PROGRAM

AN ACT to amend and reenact section 43-17.2-01, subsection 5 of section 43-17.2-02, subsection 3 of section 43-17.2-03, and section 43-17.2-08 of the North Dakota Century Code, relating to the state-community matching physician loan repayment program and powers of the state health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.2-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.2-01. State-community matching physician loan repayment program.

1. The North Dakota state-community matching physician loan repayment program is established as provided by this chapter.

2. The purpose of the program is to increase the number of physicians practicing medicine in North Dakota communities with defined health professional medical need.

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

4. ~~Loan repayment funds consist of a fifty percent match from the state and a fifty percent match from the selected community.~~

~~5.~~ Each recipient is limited to a ~~forty~~ forty-five thousand dollar maximum loan repayment from the state to be paid over ~~four~~ two years. The loan repayment from the selected community must be in an amount that equals or exceeds the amount of loan repayment provided by the state. The selected community may negotiate a period of service longer than two years.

~~6.~~ 5. The state health council ~~shall~~ may select ~~up to five recipients in five communities~~ any number of recipients and communities each year as participants in the program subject to the availability of funding.

SECTION 2. AMENDMENT. Subsection 5 of section 43-17.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Enter into a ~~four-year~~ two-year nonrenewable loan repayment program contract with the applicant and the selected community to provide

repayment of education loans in exchange for the physician agreeing to practice medicine in the selected community.

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

3. A physician who receives loan repayment under this chapter:

   a. Must be a graduate of an accredited four-year allopathic or osteopathic medical school located in the United States, its possessions, territories, or Canada and approved by the state board of medical examiners or by an accrediting body approved by the board;

   b. Must ~~be enrolled in or have graduated from an accredited graduate training program in medicine prior to or within one year after submitting an application to participate in the loan repayment program and~~ not have practiced full-time medicine in this state ~~within three years~~ for more than one year before the date of the application;

   c. Must ~~be licensed~~ have a full and unrestricted license to practice medicine in this state;

   d. Shall submit an application to participate in the loan repayment program; and

   e. Must have entered into an agreement with a selected community to provide full-time medical services for a minimum of ~~four~~ two years at the selected community if the applicant receives a loan repayment program contract.

SECTION 4. AMENDMENT. Section 43-17.2-08 of the North Dakota Century Code is amended and reenacted as follows:

43-17.2-08. Term of obligated service. The length of the term of obligated service of a recipient of a loan repayment under this chapter is ~~four~~ a minimum of two years.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 361

HOUSE BILL NO. 1258
(Representative Porter)

DENTAL PRACTICE AND REGULATION

AN ACT to create and enact two new sections to chapter 43-20 of the North Dakota Century Code, relating to a scope of practice and continuing education requirements for dental assistants; and to amend and reenact subsection 2 of section 43-20-05, sections 43-20-06, 43-20-12, and 43-20-12.1, subsection 3 of section 43-28-01, subsection 2 of section 43-28-02, subsection 3 of section 43-28-06, subsection 2 of section 43-28-10, sections 43-28-12.2, 43-28-17, and 43-28-18, and subsection 2 of section 43-28-22 of the North Dakota Century Code, relating to the regulation of dentists, dental hygienists, and dental assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Failure, neglect, or refusal to renew a license ~~annually~~ biennially.

SECTION 2. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - ~~Fees~~ Cancellation - ~~Display~~ Inactive status. ~~In the month prior to expiration, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default.~~ At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. If a licensee fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental hygienist of the cancellation. The payment of the biennial fee within that thirty-day period, with an additional sum determined by the board, excuses the default. ~~The board may collect the fee by suit. Each licensed hygienist shall display conspicuously at the place of employment the annual registration license.~~ Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the individual may not engage in the practice of dental hygiene in the state until the individual submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule of the board.

SECTION 3. AMENDMENT. Section 43-20-12 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12. Dental hygienist - ~~Dental assistant~~ - Scope of permitted practice.

~~1.~~ A licensed dentist may delegate to a competent dental hygienist ~~or dental assistant~~ those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. ~~A dental hygienist or dental assistant may take impressions for athletic mouthguards, for rapid palatal expanders, and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.~~

~~2.~~ ~~A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners.~~ The board of dental examiners may adopt rules governing the scope of practice of dental hygienists.

SECTION 4. AMENDMENT. Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists. ~~Upon the second anniversary of the issuance of a certificate of registration to practice dental hygiene and each two years thereafter, each person~~

1. At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes an affidavit for reporting of continuing education and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. Each individual licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the ~~licensed person~~ licensee has attended, or participated in, the amount of continuing education in dental hygiene as is required by the board. The minimum requirement may not be less than sixteen hours during the preceding two years of licensure. The board may accept for compliance with ~~this~~ the continuing education requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

   ~~1.~~ a. ~~Attendance~~ Proof of attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.

   ~~2.~~ b. ~~Research~~ Proof of research, graduate study, teaching, or service as a clinician.

   ~~3.~~ c. ~~Any~~ Proof of any other ~~evidence of~~ continuing education approved by the board.

2. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of credit from continuing education activities. If a licensee is selected for an audit of the licensee's continuing education activities, the licensee shall provide satisfactory documentation of attendance at or participation in the continuing education activities listed on the licensee's sworn affidavit. The failure

to comply with the audit may be grounds for nonrenewal of the licensee's license. Any ~~licensed person~~ licensee who fails to comply with ~~this~~ the continuing education requirement may, at the discretion of the board, be reexamined to determine the ~~person's~~ individual's competency to continue licensure. If, in the opinion of the board, the ~~licensed person~~ individual does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

SECTION 5. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental assistant - Scope of permitted practice. A dentist may delegate to a dental assistant procedures over which the dentist exercises full responsibility. A dental assistant may perform any delegated procedure over which the dentist exercises direct, indirect, or general supervision as permitted by rules adopted by the board of dental examiners.

SECTION 6. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirement for registered dental assistants.

1. At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a licensee fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:

   a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.

   b. Proof of research, graduate study, teaching, or service as a clinician.

   c. Proof of any other continuing education approved by the board.

2. The board may select a random sample of the registrants for audit of continuing education credits. Each registrant shall maintain certificates or records of continuing education credit. The board shall notify a registered dental assistant selected for a continuing education audit. If a registered dental assistant is selected for a continuing education audit, the dental assistant shall provide satisfactory documentation of

attendance at or participation in the continuing education activities included on the registrant's sworn affidavit. The failure to comply with an audit may be grounds for nonrenewal of the registration. A dental assistant who fails to comply with the continuing education requirements may be reexamined by the board to determine the individual's competency to continue engaging in dental assisting activities. If the board determines that the dental assistant is not qualified, the board shall suspend the registration until the individual provides acceptable evidence to the board of the individual's competency to practice as a dental assistant.

SECTION 7. AMENDMENT. Subsection 3 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the ~~annual~~ biennial registration fee required by this chapter.

SECTION 8. AMENDMENT. Subsection 2 of section 43-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. To students enrolled in and regularly attending any dental college or dental hygiene or dental assisting program recognized as such by the board, if their acts are done in dental college or the dental hygiene or dental assisting program and under the direct supervision of their instructor; or to students who are in training in dental ~~colleges~~ programs recognized as such by the board and who are continuing their training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise ~~such externships~~ an externship by the appropriate accrediting committee, including the board.

SECTION 9. AMENDMENT. Subsection 3 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses to practice dentistry or dental hygiene and the ~~annual~~ biennial certificates of registration upon any grounds authorized by this chapter.

SECTION 10. AMENDMENT. Subsection 2 of section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The person holds a valid ~~annual~~ biennial certificate of registration.

SECTION 11. AMENDMENT. Section 43-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists - Audit. ~~Upon the second anniversary of the issuance of a certificate of registration to practice dentistry and each two years thereafter, each person~~

1. At least thirty days before January first of each even-numbered year, the board shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. Each individual licensed to practice dentistry in this state

shall provide the board evidence, of a nature suitable to the board, that the ~~licensed person~~ licensee has attended, or participated in, the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than thirty-two hours during the preceding two years of licensure. The board may accept for compliance with ~~this~~ the continuing education requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

~~1.~~ a. ~~Attendance~~ Proof of attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.

~~2.~~ b. ~~Research~~ Proof of research, graduate study, teaching, or service as a clinician.

~~3.~~ c. ~~Any~~ Proof of any other ~~evidence of~~ continuing education approved by the board.

2. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at or participation in the continuing education activities listed on the licensee's continuing education form. The failure to comply with the audit is grounds for nonrenewal of the license. Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

SECTION 12. AMENDMENT. Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay annual fee - ~~Revocation~~ Cancellation of license - Inactive status. ~~Whenever~~ If a licensed dentist fails to pay the ~~annual~~ biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may ~~revoke~~ cancel the license ~~to practice dentistry and notify the dentist of the revocation~~, notify the dentist of the cancellation, and record the cancellation. The payment of the ~~annual~~ biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the licensee may not engage in the practice of dentistry in the state until the individual submits a reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

SECTION 13. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for revocation or suspension of license and certificate. The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional, or immoral conduct.

2. Been convicted of an offense determined by the board to have a direct bearing upon ~~a person's~~ the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that ~~a person~~ the individual is not sufficiently rehabilitated under section 12.1-33-02.1.

3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.

4. Been guilty of habitual intemperance or addicted to the use of drugs.

5. Employed or permitted an unlicensed ~~persons~~ individual to practice dentistry in the office under the dentist's control.

6. Become grossly negligent in the practice of the profession.

7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.

8. Willfully betrayed confidential relations.

9. ~~Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners. However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of the association.~~

~~10.~~ Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.

~~11.~~ 10. Used any advertising of any character tending to mislead and deceive the public.

~~12.~~ 11. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.

~~13.~~ 12. Prescribed medications for reasons or conditions outside the scope of dental practice.

~~14.~~ 13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.

~~15.~~ 14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.

~~16.~~ 15. Willfully engaged in fraudulent submission of insurance claims.

~~17.~~ 16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.

~~18.~~ 17. Made any false representations that the ~~person~~ individual is the holder of a license or certificate of registration to practice dentistry.

~~19.~~ 18. Made any false claims that the ~~person~~ individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.

~~20.~~ 19. Failed to comply with commonly accepted national infection control guidelines and standards.

20. Abandoned the dentist's practice as defined by rules adopted by the board.

21. Violated this chapter.

SECTION 14. AMENDMENT. Subsection 2 of section 43-28-22 of the North Dakota Century Code is amended and reenacted as follows:

2. Where the license and certificate of registration has been revoked for nonpayment of ~~annual~~ biennial registration fees required by this chapter, the dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board. However, the board, after an investigation, may require a dentist whose license has been revoked for nonpayment of the ~~annual~~ biennial registration fee to submit to a reexamination as to the ~~person's~~ individual's qualification to practice dentistry before the ~~person~~ individual is reinstated, if the board ~~in the exercise of its discretion finds and~~ determines that the best interests of the public, and the applicant, will be served thereby.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 362

HOUSE BILL NO. 1475

(Representatives Potter, Dietrich, Weiler)
(Senators J. Lee, Tallackson)

ORGANIZATION REAL ESTATE LICENSE

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to real estate salesperson licenses for business organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Salesperson license issued to an organization - Fees.

1. The commission may grant a salesperson license to an organization if:

   a. The organization is owned solely by one individual who is licensed as a salesperson;

   b. The organization does not engage in any real estate transaction as a third-party agent or in any other capacity requiring a license under this chapter; and

   c. The organization does not advertise or otherwise portray to the public that the organization is a real estate broker or real estate brokerage firm.

2. The employing or associating broker of a salesperson that is an organization is not relieved of any obligation to supervise the employed or associated salesperson or of any other requirements under this chapter.

3. An individual who forms a salesperson organization is not by nature of that act relieved of any personal liability for licensed activities.

4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson.

Approved April 5, 2005
Filed April 6, 2005

CHAPTER 363

HOUSE BILL NO. 1240

(Representatives Dietrich, Carlson, Potter, Weiler, Wieland)
(Senator J. Lee)

REALTOR EDUCATION REQUIREMENTS

AN ACT to amend and reenact subsection 4 of section 43-23-08 of the North Dakota Century Code, relating to real estate salesperson education requirements for licensure; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-23-08 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Each~~ As a prerequisite for licensure, an applicant for a salesperson's license ~~must have successfully completed at least thirty classroom~~ shall furnish to the commission evidence the applicant has successfully completed at least forty-five hours in ~~a course~~ courses of study approved by the commission~~, and each~~. Within one year after initial licensure as a salesperson, the salesperson's broker shall furnish to the commission evidence of the salesperson's successful completion of fifteen postlicensure hours in courses of study approved by the commission. An applicant for a broker's license must have successfully completed an additional sixty ~~classroom~~ hours in ~~a course~~ courses of study approved by the commission. ~~Applicants~~ An applicant for a salesperson's license may take the licensing examination ~~prior to the~~ before fulfillment of the prerequisite educational requirement~~,~~; however, ~~no~~ the commission may not issue a salesperson's license ~~can be issued~~ to an applicant unless satisfactory evidence of completion of this prerequisite education requirement is furnished to the commission. ~~Applicants~~ An applicant for a broker's license must have satisfactorily fulfilled the educational requirement ~~prior to~~ before taking the broker's licensing examination. ~~As used throughout this section, the term "classroom hours" means the actual time during such course of study that the class is actually in session. The requirements of this subsection do not apply to license renewals under section 43-23-08.2.~~

SECTION 2. EFFECTIVE DATE. This Act becomes effective January 1, 2006.

Approved March 21, 2005
Filed March 22, 2005

CHAPTER 364

HOUSE BILL NO. 1124

(Industry, Business and Labor Committee)
(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

REAL ESTATE APPRAISAL PERMITS AND PRACTICE

AN ACT to create and enact a new section to chapter 43-23.3 of the North Dakota Century Code, relating to the issuance of real estate appraiser permits to applicants licensed or certified by another state; to amend and reenact sections 43-23.3-04, 43-23.3-10, 43-23.3-11, 43-23.3-19, and 43-23.3-23 of the North Dakota Century Code, relating to real estate appraisers and the practice of real estate appraisal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04. Permit required - Exemptions. Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser licensed or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a ~~nonresident~~ temporary permit under section 43-23.3-11. This chapter does not apply to a licensed real estate broker or salesman who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

SECTION 2. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Issuance of permits to applicants licensed or certified by another state. The board may issue a permit to an applicant who is licensed or certified in good standing by another state if the other state's requirements to be licensed or certified are at least substantially equivalent to the requirements imposed by this state. If an applicant was licensed or certified by another state by reciprocity or a similar process, the requirements of the state in which the applicant was originally licensed or certified must be at least substantially equivalent to the requirements imposed by this state.

SECTION 3. AMENDMENT. Section 43-23.3-10 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-10. ~~Term~~ Expiration of permit. Permits expire on December thirty-first of each year. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 4. AMENDMENT. Section 43-23.3-11 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-11. ~~Nonresident~~ Temporary permit.

1. ~~A nonresident~~ The board may issue a temporary permit to an applicant who is licensed or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, license, or certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.

2. An applicant for a temporary permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last-known business address of the ~~nonresident appraiser~~ applicant.

~~2.~~ 3. The board may issue a temporary permit to ~~a nonresident~~ an applicant if the applicant agrees in writing to abide by this chapter and to submit to the jurisdiction of the board.

~~3.~~ 4. The board shall issue a temporary permit to ~~practice to a nonresident~~ an applicant who has complied with this section. The board may require the ~~nonresident~~ applicant to pay a ~~temporary appraiser's~~ fee. The board shall determine the amount of the ~~temporary~~ fee and the duration of the temporary permit.

~~4. If the board determines that another state has substantially equivalent requirements and the board enters into a reciprocity agreement, an applicant from that state may obtain a permit to practice as either a licensed or certified appraiser upon application and payment of any required permit fee.~~

SECTION 5. AMENDMENT. Section 43-23.3-19 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-19. Continuing education. ~~Each applicant for renewal of a permit shall submit proof of participation in the minimum number of continuing education hours required and approved by the board.~~ The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.

2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.

3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

SECTION 6. AMENDMENT. Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-23. Penalties. A person acting or purporting to act as a licensed or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser licensed or certified in another state who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a ~~nonresident~~ temporary permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

Approved March 31, 2005
Filed March 31, 2005

CHAPTER 365

SENATE BILL NO. 2366

(Senators G. Lee, J. Lee, Nething)
(Representatives Martinson, Price)

PHYSICAL THERAPY PRACTICE

AN ACT to create and enact chapter 43-26.1 of the North Dakota Century Code, relating to the practice of physical therapy; to amend and reenact subsection 1 of section 10-31-04 of the North Dakota Century Code, relating to statutory cross-reference; to repeal chapter 43-26 of the North Dakota Century Code, relating to the practice of physical therapy; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters ~~43-26~~ 43-26.1 and 43-40.

SECTION 2. Chapter 43-26.1 of the North Dakota Century Code is created and enacted as follows:

43-26.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of physical therapy.

2. "Examination" means a national examination approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.

3. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.

4. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session

in which a physical therapist assistant or a physical therapy aide is involved in components of care.

5. "Physical therapist" means a person licensed under this chapter to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" under this chapter.

6. "Physical therapist assistant" means a person who is licensed under this chapter and who assists the physical therapist in selected components of physical therapy intervention.

7. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed under this chapter.

8. "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.

9. "Practice of physical therapy" means:

   a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.

   b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.

   c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.

   d. Engaging as a physical therapist in administration, consultation, education, and research.

10. "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.

11. "Testing" means standard methods and techniques used to gather data about the patient.

43-26.1-02. Board of physical therapy - Members - Appointments - Vacancies. The board of physical therapy shall administer this chapter. The board consists of three licensed physical therapists, two licensed physicians, and a citizen who is not a health care professional. The governor shall appoint the board members for a term of five years, staggered so the terms of no more than two members expire each year. A person may not serve more than two full consecutive terms. Terms begin on July first. Appointments to the board to fill a vacancy occurring for other than the expiration of a term may only be made for the remainder of the unexpired term. Each physical therapist appointed must have had at least three years of physical therapy experience in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each physician appointed must have practiced medicine at least three years in North Dakota immediately prior to appointment and must practice in North Dakota during the term. Each board member shall take and file with the secretary of state the oath of office prescribed for state officials before entering upon the discharge of the member's duties.

43-26.1-03. Powers of the board. The board may:

1. Evaluate the qualifications of applicants for licensure.

2. Provide for the examination of physical therapists and physical therapist assistants and adopt passing scores for the examinations.

3. Issue licenses to persons who meet the requirements of this chapter.

4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.

5. Adopt and revise rules consistent with this chapter.

6. Meet at least annually and such other times as deemed necessary. A majority of board members shall constitute a quorum for the transaction of business.

7. Establish mechanisms for assessing the continuing professional competence of physical therapists to engage in the practice of physical therapy.

8. Establish and collect fees for sustaining the necessary operation and expenses of the board.

9. Elect officers from its members necessary for the operations and obligations of the board. Terms of office shall be one year.

10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, and board rules, policies, and procedures.

11. Maintain a current list of all persons regulated under this chapter. This information includes the person's name, current business address, business telephone number, and board license number.

12. Provide information to the public regarding the complaint process.

13. Employ necessary personnel to carry out the administrative work of the board.

14. Enter into contracts for services necessary for enforcement of this chapter.

15. Report final disciplinary action taken against a licensee to a national disciplinary data base recognized by the board or as required by law.

43-26.1-04. Qualifications for licensure.

1. An applicant for a license as a physical therapist or physical therapist assistant shall:

   a. Be of good moral character.

   b. Complete the application process.

   c. Be a graduate of a professional physical therapy education program accredited by a national accreditation agency approved by the board.

   d. Pass the examination approved by the board.

2. An applicant for a license as a physical therapist who has been educated outside of the United States shall:

   a. Be of good moral character.

   b. Complete the application process.

   c. Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in an accredited education program as determined by the board. For the purpose of this section, "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

      (1) Graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy without restriction.

      (2) Provided written proof that the applicant's school of physical therapy education is recognized by its own ministry of education.

      (3) Undergone a credentials evaluation as directed by the board that determines that the candidate has met uniform criteria for educational requirements as further established by rule.

      (4) Completed any additional education or clinical experience as required by the board.

d. Pass the board-approved English proficiency examinations if the applicant's native language is not English.

e. Pass the examination approved by the board.

3. Notwithstanding the provisions of subsection 2, if the applicant is educated outside of the United States and is a graduate of a professional physical therapy educational program accredited by a national accrediting agency approved by the board, the board may waive the requirements in subdivision c of subsection 2.

43-26.1-05. Application and examination.

1. An applicant for licensure shall file a complete application as required by the board. The applicant shall include application fees as prescribed in this chapter and under applicable rules.

2. The board shall provide examinations at times and places it determines. The board shall determine the passing score.

3. An applicant for licensure as a physical therapist may take the examination after the application process has been completed. The examination shall test entry-level competence related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.

4. An applicant for licensure as a physical therapist assistant may take the examination after the application process has been completed. The examination shall test for requisite knowledge and skills in the technical application of physical therapy services.

5. An applicant for licensure who does not pass the examination on the first attempt may retake the examination one additional time without reapplication for licensure within six months of the first failure. Before the board may approve an applicant for subsequent testing beyond two attempts, an applicant shall reapply for licensure and shall submit evidence satisfactory to the board of having successfully completed additional clinical training or coursework, or both, as the board determines.

6. If the board determines that an applicant or examinee has engaged, or has attempted to engage, in conduct that subverts or undermines the integrity of the examination process, the board may disqualify the applicant from taking the examination.

43-26.1-06. Licensure by endorsement. The board shall issue a license to a physical therapist or physical therapist assistant who has a license in good standing from another jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state.

43-26.1-07. Exemptions from licensure.

1. This chapter does not restrict a person licensed under any other law of this state from engaging in the profession or practice for which that person is licensed as long as that person does not represent, imply, or

claim that that person is a physical therapist, physical therapist assistant, or a provider of physical therapy.

2. The following persons are exempt from the licensure requirements of this chapter when engaged in the following activities:

   a. A person in a professional education program approved by the board who is satisfying supervised clinical education requirements related to the person's physical therapist or physical therapist assistant education while under on-site supervision of a physical therapist.

   b. A physical therapist who is practicing in the United States armed services, United States public health service, or veterans administration pursuant to federal regulations for state licensure of health care providers.

   c. A physical therapist who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if that person is teaching, demonstrating, or providing physical therapy in connection with teaching or participating in an educational seminar in the state of no more than sixty days in a calendar year.

   d. A physical therapist who is licensed in another United States jurisdiction if that person is providing services in accordance with section 43-51-03.

   e. A physical therapist who is licensed in another United States jurisdiction or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the state for no more than sixty days in a calendar year.

   f. A physical therapist assistant who is licensed in another United States jurisdiction and is assisting a physical therapist engaged specifically in activities related to subdivisions b, c, and e is exempt from the requirements of licensure under this chapter.

43-26.1-08. License renewal - Changes. A licensee shall renew the license annually pursuant to board rules. A licensee who fails to renew the license on or before the expiration date shall not practice as a physical therapist or physical therapist assistant in this state, and may be subject to a late renewal fee. Each licensee is responsible for reporting to the board a name change and changes in business and home address within thirty days of the date of change.

43-26.1-09. Reinstatement of license.

1. The board may reinstate an expired license upon payment of a renewal fee and reinstatement fee.

2. If a physical therapist's or physical therapist assistant's license has expired for more than three consecutive years, that person shall reapply for licensure and shall demonstrate to the board's satisfaction

competence to practice physical therapy, by one or more of the following as determined by the board:

a. Practice for a specified time under a restricted license.

b. Complete prescribed remedial courses.

c. Complete continuing competence requirements for the period of the expired license.

d. Pass an examination.

43-26.1-10. Fees. The board shall establish and collect fees not to exceed:

1. Two hundred dollars for an application for an original license. This fee is nonrefundable.

2. One hundred dollars for an annual renewal of the license.

3. Two hundred dollars for an application for reinstatement of a license.

4. Fifty dollars for late renewal of a license.

43-26.1-11. Patient care management.

1. A physical therapist is responsible for managing all aspects of each patient's physical therapy. A physical therapist shall provide:

   a. Each patient's initial evaluation and documentation.

   b. Periodic reevaluation and documentation of each patient.

   c. The documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.

2. If the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise, a physical therapist shall so inform the patient or client and refer to an appropriate practitioner.

3. A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under the physical therapist's direction and supervision.

4. For each patient on each date of service, a physical therapist shall provide all of the therapeutic intervention that requires the expertise of a physical therapist and shall determine the use of physical therapist assistants or physical therapy aides that provide for the delivery of care that is safe, effective, and efficient.

   a. A physical therapist assistant shall work under the supervision of a physical therapist. A physical therapist assistant may document care provided without the cosignature of the supervising physical therapist.

b. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the onsite supervision of a physical therapist who is onsite and present in the facility. This supervision may extend to offsite supervision of the aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient-related tasks.

5. A physical therapist's responsibility for patient care management shall include accurate documentation and billing of the services provided.

43-26.1-12. Consumers' rights.

1. The public shall have access to the following information:

a. A list of physical therapists that includes place of practice, license number, date of license, and expiration and status of license.

b. A list of physical therapist assistants licensed in the state, including place of employment, license number, date of license, and expiration and status of license.

c. The board's address and telephone number.

2. A patient has freedom of choice in selection of services and products.

3. Information relating to the physical therapist-patient relationship is confidential and may not be communicated to a third party who is not involved in that patient's care without the written authorization of the patient or as permitted by law.

4. Any person may submit a complaint to the board regarding any licensee, or any other person potentially in violation of this chapter.

43-26.1-13. Grounds for disciplinary actions. The board may refuse to license any physical therapist or physical therapist assistant, may discipline, or may suspend or revoke the license of any physical therapist or physical therapist assistant for any of the following grounds:

1. Violating any provision of this chapter, board rules, or a written order of the board.

2. Practicing or offering to practice beyond the scope of the practice of physical therapy.

3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals findings that are outside the scope of a physical therapist's knowledge, experience, or expertise.

4. Obtaining or attempting to obtain a license by fraud or misrepresentation.

5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.

6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist regardless of whether actual injury to the patient is established.

7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.

8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under section 12.1-33-02.1.

9. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals, alcohol, or by other causes.

10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.

11. Engaging in sexual misconduct. For the purpose of this paragraph sexual misconduct includes:

    a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists, except with a spouse.

    b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.

    c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

12. Failing to adhere to the standards of ethics of the physical therapy profession adopted by rule by the board.

13. Charging unreasonable or fraudulent fees for services performed or not performed.

14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.

15. Having been adjudged mentally incompetent by a court.

16. Aiding and abetting a person who is not licensed in this state in the performance of activities requiring a license.

17. Failing to report to the board, where there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this chapter or any rules established by the board.

18. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.

19. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record, and a discharge plan.

20. Failing to maintain patient confidentiality without the written authorization of the patient or unless otherwise permitted by law. All records used or resulting from a consultation under section 43-51-03 are part of a patient's records and are subject to applicable confidentiality requirements.

21. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.

22. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.

23. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.

43-26.1-14. Lawful practice.

1. A physical therapist licensed under this chapter is fully authorized to practice physical therapy as defined herein. The board shall require each licensee to provide the board with evidence of competence regarding the various elements of manual therapy the licensee practices so that the board may determine satisfactory competency levels and requirements as provided under section 43-26.1-03.

2. A physical therapist shall adhere to the standards of ethics of the physical therapy profession as established by rule.

3. A physical therapist may purchase, store, and administer topical medications, including aerosol medications as part of the practice of physical therapy as defined herein, but shall not dispense or sell any of the medications to patients. A physical therapist shall comply with any regulation adopted by the United States pharmacopoeia specifying protocols for storage of medications.

43-26.1-15. Terms and titles.

1. A physical therapist shall use the letters "PT" in connection with the physical therapist's name or place of business to denote licensure under this chapter.

2. Except as otherwise provided by law, a person or business entity, and its employees, agents, or representatives, shall not use in connection with that person's or entity's name or activity the words "physical therapy", "physical therapist", "physiotherapist", "registered physical

therapist", the letters "PT", "MPT", "DPT", "LPT", "RPT", or any other words, abbreviation or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this chapter. A person or business entity shall not advertise or otherwise promote another person as being a "physical therapist" or "physiotherapist" unless the individual so advertised or promoted is licensed as a physical therapist under this chapter. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as "physical therapy" unless the individual performing that service is licensed as a physical therapist under this chapter.

3. A physical therapist assistant shall use the letters "PTA" in connection with that person's name to denote licensure under this chapter.

4. A person shall not use the title "physical therapist assistant", the letters "PTA", or any other words, abbreviations, or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is licensed under this chapter.

43-26.1-16. Representations and billings without licensure prohibited - Enforcement - Injunctions. No person or business entities of any type shall practice physical therapy or hold themselves out, represent themselves, or send out billings as providing physical therapy services, without personal licensure or the use of licensed employees as provided in this chapter. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services. The board's executive officer, under the board's direction, shall aid state's attorneys in the enforcement of this chapter and the prosecution of any violations thereof. In addition to the criminal penalties provided by this chapter, the civil remedy of injunction shall be available to restrain and enjoin violations of this chapter without proof of actual damages sustained by any person.

43-26.1-17. Penalty. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

SECTION 3. REPEAL. Chapter 43-26 of the North Dakota Century Code is repealed.

Approved April 4, 2005
Filed April 4, 2005

CHAPTER 366

HOUSE BILL NO. 1200
(Representative Keiser)

NONPROFIT DENTAL SERVICES

AN ACT to amend and reenact section 43-28-25 of the North Dakota Century Code, relating to dental services offered through a nonprofit organization; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.

2. For any dentist to help or assist any unlicensed person to perform any act or operation ~~which~~ that is defined ~~in this chapter~~ as the practice of dentistry.

3. For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.

4. For any dentist to work or cooperate with dental laboratories ~~which~~ that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.

5. For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board~~,~~ which must contain:

   a. The name and address of such unlicensed person;

   b. The patient's name or number, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;

   c. The date on which it was written;

   d. A prescription of the work to be done, with diagram, if necessary;

e. A specification of the type and quality of materials to be used; and

f. The signature of the dentist and the number of the dentist's North Dakota license.

Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or ~~its~~ the board's agent for two years.

6. For any dentist:

a. To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;

b. To fail to retain a duplicate copy thereof for two years; or

c. To refuse to allow the board or ~~its~~ the board's agent to inspect such prescription during the two-year period of time.

7. For any unlicensed person:

a. To perform any such service without first having obtained such prescription;

b. To fail to retain the original thereof for two years; or

c. To refuse to allow the board or ~~its~~ the board's agent to inspect it during such two-year period of time.

8. For any person:

a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;

b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;

c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or

d. To practice dentistry in this state without a license and certificate of registration.

9. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business ~~where dental operations, dental oral surgery, or dental services are~~ at which the practice of dentistry is performed. This provision does not apply to a board-approved medical ~~clinics and public health settings where dentists are~~ clinic, hospital, or public health setting with which a dentist is associated ~~and~~; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist ~~who~~. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

Approved April 14, 2005
Filed April 18, 2005

CHAPTER 367

HOUSE BILL NO. 1165

(Government and Veterans Affairs Committee)
(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE SERVICES LICENSING

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to exceptions to private investigative services licensing; to amend and reenact sections 43-30-01, 43-30-02, and 43-30-03 of the North Dakota Century Code, relating to licensing persons engaged in private investigative service or private security service; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-01 of the North Dakota Century Code is amended and reenacted as follows:

43-30-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the private investigative and security board.

2. "Employee" means an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the "common law" test.

3. "License" includes a registration issued by the board.

~~3.~~ 4. "Licensee" includes an individual who is registered by the board.

~~4.~~ 5. "Private investigative service" means ~~obtaining or furnishing information with reference to any act or individual~~, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:

a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;

b. Investigating the credibility of persons;

c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;

d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;

e. Investigating the affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association, or with any official, representative, or member thereof;

f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;

g. Investigating or obtaining evidence to be used before any authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or

h. Investigating the identity or location of persons suspected of crimes or wrongdoing.

~~5.~~ 6. "Private security service" means furnishing for hire security officers or other persons to ~~protect~~:

a. Protect persons or property~~, or to prevent the~~;

b. Prevent or detect theft or the unlawful taking of goods, wares, ~~and~~ or merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers~~, or the business of performing the service of such security officer or other person for any of these purposes~~;

c. Control, regulate, or direct the flow of or movements of the public, whether by vehicle or otherwise, to assure protection of private property;

d. Prevent or detect intrusion, unauthorized entry or activity, vandalism, or trespass on private property;

e. Perform the service of a security officer or other person for any of these purposes; or

f. Transport money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery.

SECTION 2. AMENDMENT. Section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

43-30-02. Exemptions. This chapter does not apply to:

1. Any investigator or officer directly employed by or under any direct contract with the federal government, state, or any county or city thereof, appointed, elected, or contracted with, by due authority of law, while engaged in the performance of official duties. Subcontractors of agencies directly contracted with these entities are not exempted.

2. Any state's attorney.

3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.

4. Any person ~~whose sole investigative business is the furnishing of information as to the business and financial standing and credit of persons~~ engaged exclusively in obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibilities of applicants for insurance, indemnity bonds, or commercial credit.

5. A collection agency or finance company licensed to do business under the laws of this state, or an employee of one of those companies, while acting within the scope of employment when making an investigation incidental to the business of the agency, including an investigation as to location of a debtor and of the debtor's assets or property, provided the client has a financial interest in or a lien upon the assets or property of the debtor.

~~5.~~ 6. Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.

~~6. Any person making any investigation for any person engaged in the business of transporting persons or property in interstate commerce.~~

~~7. Any adjuster or investigator representing an insurance company.~~

~~8.~~ 7. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records, other than those investigating the location or recovery of abandoned or escheated property, owners of abandoned or escheated property, or heirs to estates.

8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire cause and origin inspections, technical surveillance counter measures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.

9. Persons reporting for any media, including news reporters or news investigators.

10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.

SECTION 3. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Fair housing law compliance - Exception - Penalty. This chapter does not apply to a person testing for fair housing law compliance who is employed by or volunteers with an organization recognized for this purpose under federal or state law and who meets the requirements, except for actual registration, of a registered private investigator established by the board. These requirements include a state and nationwide criminal history background check conducted by the bureau of

criminal investigation and the federal bureau of investigation. The results of the state and nationwide criminal history background check must be on file with the organization. The board, at its request, may review the criminal history background check and other information related to any person conducting the compliance test. Any person who knowingly violates the requirements for an exception under this section is guilty of a class B misdemeanor.

SECTION 4. AMENDMENT. Section 43-30-03 of the North Dakota Century Code is amended and reenacted as follows:

43-30-03. Private investigative and security board. The governor shall appoint a private investigative and security board. The board must consist of not less than five nor more than eleven members appointed for staggered four-year terms. Appointees to the board must be knowledgeable in private investigative or private security matters. A majority of the members of the board must be actively engaged in the private investigative or security profession, with at least one member actively engaged in law enforcement. Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 368

HOUSE BILL NO. 1161

(Government and Veterans Affairs Committee)
(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE SERVICES

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to citations for unlicensed provision of private investigative services or unlicensed private security services; to amend and reenact sections 43-30-10 and 43-30-12 of the North Dakota Century Code, relating to disciplinary measures for persons engaged in private investigative service or private security service; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-10 of the North Dakota Century Code is amended and reenacted as follows:

43-30-10. Penalty - Injunction - Unlicensed activity. Any person who violates this chapter or rules adopted under this chapter, or any person who provides a private investigative service or private security service without a current license issued by the board, or 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. An injunction does not preclude criminal prosecution and punishment of a violator. The board is not liable for the lost income, costs, or any other expenses that may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 2 of this Act if the person has violated a provision of chapter 43-30.

SECTION 2. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Issuance of citations for unauthorized practice - Administrative fee - Appeal.

1. The board may issue a citation to a person who the board finds probable cause to believe has violated section 43-30-10.

2. A citation must be in writing and describe with particularity the nature of the violation. The citation must also inform the person of the provisions of subsection 5. A separate citation must be issued for each violation.

3. If appropriate, the citation must contain an order of abatement fixing a reasonable time for abatement of the violation.

4. The board may assess an administrative fee of:

a. For the first violation, up to two hundred fifty dollars.

b. For the second violation, up to five hundred dollars.

c. For the third or subsequent violation, up to one thousand dollars.

5. To appeal the finding of a violation, the person must request a hearing by written notice of appeal to the board within thirty days after the date of issuance of the citation.

6. An appeal must be heard under the procedures contained in chapter 28-32.

7. A citation does not preclude a civil injunction or the criminal prosecution and punishment of a violator.

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

43-30-12. Disciplinary action. The board may refuse to renew, suspend, 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.

5. Any person licensed, certified, or registered by the board pursuant to this chapter who violates any statute or board regulation and who is not criminally prosecuted is subject to a monetary penalty, which may be assessed at a hearing under the procedures contained in chapter 28-32. If the board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which may not exceed two thousand five hundred dollars for each violation. The penalty may be sued for and recovered in the name of the board. The monetary penalty must be paid into the board's general fund.

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.

Approved March 30, 2005
Filed March 31, 2005

CHAPTER 369

HOUSE BILL NO. 1439

(Representatives Wrangham, DeKrey, Weisz)
(Senators Klein, J. Lee, Wardner)

INDUSTRIAL-ORGANIZATIONAL PSYCHOLOGIST LICENSING

AN ACT to amend and reenact sections 43-32-01, 43-32-03, 43-32-07, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-12, 43-32-13, 43-32-14, 43-32-17, 43-32-19, 43-32-20, 43-32-20.1, 43-32-23, 43-32-25, 43-32-26, 43-32-27, 43-32-27.1, 43-32-30, and 43-32-32 of the North Dakota Century Code, relating to North Dakota state board of psychologist examiners licensure of industrial-organizational psychologists; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-01 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. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.

3. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.

4. "Licensee" means an industrial-organizational psychologist or a psychologist.

5. "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of

physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes providing psychological services to individuals, families, groups, and the public regardless of whether payment is received for services rendered.

~~3.~~ 6. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

~~4.~~ 7. "Psychology resident" means an individual who has received from ~~an accredited~~ a school or college a doctorate degree in a program of study substantially psychological in nature, and who is involved in supervised psychological employment.

~~5.~~ 8. "School or college" means any university or other institution of higher learning ~~that~~ which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology or psychology.

SECTION 2. 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. The term of office of each member of the board is three years and until a successor is appointed and qualified. The governor shall fill all vacancies by appointment. In case of a vacancy before the expiration of a term, the appointment must be for the remainder of the term only. ~~A person~~ An individual appointed to the board qualifies by taking the oath required of civil officers.

SECTION 3. AMENDMENT. Section 43-32-07 of the North Dakota Century Code is amended and reenacted as follows:

43-32-07. Meetings of board - Seal of board. The board shall hold at least one regular meeting each year. Additional meetings may be held upon call of the president or at the written request of the governor or of any two members of the board. The meetings must be held at such places as the board may designate. The board ~~shall~~ must have a seal.

SECTION 4. AMENDMENT. Section 43-32-08 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08. Rules ~~and regulations~~. The board may~~, from time to time,~~ adopt ~~such~~ rules ~~and regulations not inconsistent with law,~~ as ~~may be~~ necessary to enable ~~it~~ the board to carry into effect the provisions of this chapter~~, which~~. The rules may include a code of ethics for ~~psychologists in the state~~ licensees. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

SECTION 5. 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~~ licensees. 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 6. AMENDMENT. Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.2. 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~~ under section 43-32-08.1 have been met. ~~A person~~ An individual 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~~ individual demonstrates to the secretary of the board the continuing education requirements have been satisfied ~~and~~, pays the renewal fee, and pays a late fee to be determined by rule of the board.

SECTION 7. AMENDMENT. Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

43-32-12. Application and license fee. The board shall adopt rules establishing the amount of the application fee for ~~licensing~~ licensure by written and oral examination and by reciprocity ~~must be determined by regulation of the board~~. ~~No~~ A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

SECTION 8. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and fee. Before January first of each year, every ~~licensed psychologist in the state~~ licensee shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred dollars. The secretary of the board, upon receipt of payment of the annual license fee ~~by a person licensed under this chapter~~, shall issue the licensee a certificate of annual license. ~~A person~~ An individual may not hold out as an industrial-organizational psychologist or a ~~licensed~~ psychologist until the annual license fee is paid. The board may deny renewal of the license of ~~a person~~ an individual who violates this section. Annually, the board shall mail a renewal notice to ~~all licensed psychologists~~ each licensee 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. ~~A person who has been a licensed psychologist in this state~~ An individual whose license issued under this chapter ~~and whose license has been~~ was revoked for failure to pay the annual license fee must be reinstated and the license renewed if, within one year from the date of revocation, the ~~person~~ individual pays to the secretary of the board the amount of the annual license fees in default and a late fee in the amount of twenty dollars.

SECTION 10. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as otherwise provided ~~by~~ under this chapter, ~~no individual~~ a person may not engage in the practice of psychology or represent that ~~individual~~ person to be a psychologist in this state ~~after August 1, 1993,~~ unless that person is an individual ~~has obtained from the board a license to do so~~ who is licensed as a psychologist under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology or represent that person to be an industrial-organizational psychologist in this state unless that person is an individual who is licensed as a psychologist or an industrial-organizational psychologist under this chapter.

2. A psychologist may use the title "psychologist" or similar title in conjunction with the practice of psychology. An industrial-organizational psychologist may use the title "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" in conjunction with the practice of industrial-organizational psychology. An industrial-organizational psychologist may not use the title "psychologist" or similar title representing that the individual is licensed as a psychologist.

SECTION 11. AMENDMENT. Section 43-32-19 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20. Licensing - Written and oral examination - Qualifications of applicants. The board shall issue a license to each applicant who files an application upon a form and in a manner the board prescribes, submits the required fee, and demonstrates to the board that the applicant~~:~~ meets the requirements of subsection 1 or 2.

1. An applicant for licensure as a psychologist shall demonstrate the applicant:

   a. 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.~~ b. Has received from an accredited school or college as defined by this chapter a doctorate degree in a program of studies substantially psychological in nature.

~~3.~~ c. Has passed the examinations, written ~~or~~, oral, or both, as the board ~~deems~~ determines necessary.

~~4.~~ d. Has completed at least two full years of supervised professional experience, one year of which must be an internship program, and one year of which must be postdoctoral. Both years of experience must comply with the board's rules.

2. An applicant for licensure as an industrial-organizational psychologist shall demonstrate the applicant:

a. 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.

b. Has received from a school or college a doctorate degree in a program of studies substantially psychological in nature.

c. Has passed the examinations, written, oral, or both, as the board determines necessary.

d. Has completed the professional experience requirements established by the board. The requirements may not exceed the professional experience requirements for psychologists. If the professional experience requirements include a supervised experience requirement:

(1) The board must allow an applicant to submit to the board a personalized plan for supervised experience which may include distance-supervision by a qualified industrial-organizational psychologist.

(2) The board may adopt rules to establish who is qualified to perform supervision, supervision requirements, and reporting.

SECTION 13. AMENDMENT. Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20.1. Postdoctoral supervised psychological employment.

~~1.~~ This section applies to postdoctoral supervised psychological employment. 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 psychologist 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~~ during which the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for ~~persons~~ individuals preparing for licensure on a part-time basis.

~~3.~~ The board may adopt rules regarding postdoctoral psychology supervision requirements and reporting.

SECTION 14. AMENDMENT. Section 43-32-23 of the North Dakota Century Code is amended and reenacted as follows:

43-32-23. Scope and grading of examination. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Written examinations may be supplemented by ~~such~~ oral examinations as the board may determine necessary. The board shall determine an acceptable level of performance for each examination and a majority decision of the board is required for the issuing of a license. ~~To ensure impartiality, the written examination must be identified by numbers and no paper may be marked in the name of any applicant, but must be anonymously graded by the board.~~

SECTION 15. AMENDMENT. Section 43-32-25 of the North Dakota Century Code is amended and reenacted as follows:

43-32-25. Retention of examination records. The board shall keep the written examination ~~papers and~~ score report, an accurate recording of the questions and answers relating to the oral examinations, and the grade assigned to each answer thereof as a part of ~~its~~ the board's records for at least two years ~~subsequent to~~ following the date of the examination. In addition, the board shall keep a permanent record of all written examination score reports.

SECTION 16. AMENDMENT. Section 43-32-26 of the North Dakota Century Code is amended and reenacted as follows:

43-32-26. Issuance and display of license. The board is the sole agency empowered to examine competence in the practice of psychology. ~~Such~~ A license certificate issued by the board must show the full name of the licensee, have a serial number ~~and~~, be signed by the president of the board, and be attested by the secretary under the board's adopted seal. The license issued by the board under ~~the provisions of~~ this chapter must be prominently displayed at the principal place of business ~~where~~ at which the ~~psychologist~~ licensee practices.

SECTION 17. AMENDMENT. Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The board, after notice ~~and~~, hearing, and ~~by~~ an affirmative vote of at least a majority of board members, may withhold, deny, revoke, or suspend any ~~psychologist~~ license issued or applied for under this chapter~~, or~~ and may otherwise discipline a ~~licensed psychologist,~~ licensee or an applicant upon proof the applicant or ~~licensed psychologist~~ licensee:

   a. Has been convicted of an offense determined by the board to have a direct bearing upon ~~a person's~~ an individual's ability to serve the public as a psychologist or industrial-organizational psychologist, or ~~when~~ if the board finds, after the conviction of any offense, that ~~a person~~ an individual is not sufficiently rehabilitated under section 12.1-33-02.1.

b. Is using any narcotic or alcoholic beverage to an extent or in a manner dangerous to the ~~psychologist~~ applicant or licensee, any other person, or the public, or to an extent that the use impairs the ~~psychologist's~~ applicant's or licensee's ability to perform the ~~work of a professional psychologist~~ practice of psychology or industrial-organizational psychology with safety to the public.

c. Has impersonated another ~~person~~ individual holding a psychology or industrial-organizational psychology license or allowed another person to use the ~~psychologist's~~ licensee's license.

d. Has used fraud or deception in applying for a license or in taking an examination under this chapter.

e. Has allowed the ~~psychologist's~~ licensee's name or license issued under this chapter to be used in connection with any person who performs psychological services outside of the area of that person's training, experience, or competence.

f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.

g. Has engaged in any form of unethical conduct as defined in ethical principles of psychologists and code of conduct as adopted and published by the American psychological association, 1992, or revised editions if adopted by the board by rule.

h. Has become grossly negligent in the practice of ~~the profession~~ psychology or industrial-organizational psychology.

i. Has willfully or negligently violated this chapter.

j. Has engaged in an act in violation of rules adopted by the board.

2. ~~A person~~ An individual whose license has been revoked under this section may reapply for ~~licensing~~ licensure after two years have elapsed from the date of revocation.

SECTION 18. AMENDMENT. Section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27.1. Complaints - Investigations.

1. A person aggrieved by the actions of a ~~psychologist licensed under this chapter~~ licensee may file a written complaint with the board citing the specific allegations of misconduct by the ~~psychologist~~ licensee. The board shall notify the ~~psychologist~~ licensee of the complaint and request a written response from the ~~psychologist~~ licensee.

2. The board may investigate a complaint on ~~its~~ the board's 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~~ licensee who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes

responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation~~,~~ and providing copies of patient or client records ~~when~~ if reasonably requested by the board and accompanied by the appropriate release.

4. In order to pursue an investigation, the board may subpoena and examine witnesses and records, including patient and client records, and may copy, photograph, or take samples of the records. The board may require the ~~licensed psychologist~~ licensee to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient and client records released to the board are not public records.

5. Unless a patient or client release is on file allowing the release of information at the public hearing, patient and client records acquired by the board in ~~its~~ the board's investigation are confidential and closed to the public. All board meetings at which patient or client testimony or records are taken or reviewed are confidential and closed to the public. If ~~no~~ patient or client testimony or records are not taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 19. AMENDMENT. Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from this chapter. This chapter does not apply to:

1. Any ~~person~~ individual 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~~ individual 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, 2001. 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~~ individual affected has received from a school or college a master's degree in psychology and the ~~person's~~ individual'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 pursuing a course of study in psychology or industrial-organizational psychology at a school or college, if the activities and services are a part of the ~~person's~~ individual's supervised course of study, provided the student or intern does not use the title "psychologist" or "industrial-organizational psychologist" and the student or intern status is clearly stated.

3. A nonresident licensed or certified in the state of the ~~person's~~ individual's residence who does not practice psychology or industrial-organizational 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 or industrial-organizational psychology unless the lecturer is licensed ~~to practice psychology in this state~~ under this chapter.

5. ~~A person~~ An individual employed by a public school ~~and whose~~ if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only ~~when~~ if the ~~person~~ individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.

6. A person certified, licensed, or registered in this state in another health care profession, ~~whose~~ the scope of practice of which is consistent with the accepted standards of that person's profession ~~and who does~~. A person claiming an exemption under this subsection may not represent to be rendering psychological services.

7. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.

8. A person employed by an agency, a nonprofit corporation, or an institution ~~who~~ if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

9. A ~~psychologist~~ psychology resident performing services supervised as provided under section 43-32-20.1.

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

43-32-32. Drugs - Medicine. ~~Nothing in this~~ This chapter may not be construed as permitting ~~psychologists licensed under this chapter~~ a licensee to administer or prescribe drugs, or in any manner engage in the practice of medicine as defined by the laws of this state.

SECTION 21. EFFECTIVE DATE. Section 10 of this Act becomes effective on January 1, 2006.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 370

HOUSE BILL NO. 1212

(Representatives Delmore, Hawken, N. Johnson, R. Kelsch, S. Meyer)
(Senator Nelson)

SOCIAL WORK BOARD COMPLAINTS

AN ACT to amend and reenact section 43-41-11 of the North Dakota Century Code, relating to groundless complaints made to the board of social work examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-41-11 of the North Dakota Century Code is amended and reenacted as follows:

43-41-11. Hearings and disciplinary proceedings - Appeals.

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under section 43-41-10, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.

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 anonymity of the complainant.

3. If the investigation reveals no grounds to support the complaint, the board, three years following the date on which the complaint was filed, shall expunge the complaint from the social worker's individual record in the board's office.

4. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.

~~4.~~ 5. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations must be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.

~~5.~~ 6. The board may at any time enter into an informal resolution to resolve the complaint or disciplinary action.

~~6.~~ 7. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-42.

Approved March 4, 2005
Filed March 4, 2005

CHAPTER 371

HOUSE BILL NO. 1280

(Representatives Porter, Grande, Keiser)
(Senators Andrist, Brown, Kilzer)

POLYSOMNOGRAPHIC TECHNOLOGIST LICENSURE

AN ACT to create and enact a new section to chapter 43-42 of the North Dakota Century Code, relating to licensure of polysomnographic technologists; to amend and reenact section 43-42-01, subsection 2 of section 43-42-02, and section 43-42-03 of the North Dakota Century Code, relating to licensure of registered polysomnographic technologists; to provide for a legislative council study; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-42-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of respiratory care.

2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the commission on accreditation of allied health educational programs, or the commission's successor organization.

3. "Certification examination" means the entry level examination for respiratory therapists administered by the national board for respiratory care.

4. "Certified respiratory therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory therapist.

5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.

6. "Polysomnography" means the practice of attending, monitoring, and recording physiologic data during sleep for the purpose of identifying and assisting in the treatment of sleep-wake disorders.

7. "Registered polysomnographic technologist" means an individual licensed by the board to practice polysomnography under supervision as prescribed by the board by rule.

8. "Registered respiratory therapist" means a person licensed by the board to practice respiratory care.

~~7.~~ 9. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.

~~8.~~ 10. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and artificial airways, and insertion of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

~~9.~~ 11. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.

~~10.~~ 12. "Respiratory therapy" means respiratory care.

~~11.~~ 13. "Temporary respiratory therapist" means any individual who has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory therapist, or registered respiratory therapist.

[181] **SECTION 2. AMENDMENT.** Subsection 2 of section 43-42-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of ~~seven~~ eight members appointed by the governor. Four members must be respiratory therapists, chosen from a list of eight respiratory therapists supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. One member must be a registered polysomnographic technologist chosen from a list of candidates recommended to the governor by the association of polysomnographic technologists. Members are appointed for terms of three years. Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.

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[181] Section 43-42-02 was also amended by section 3 of House Bill No. 1280, chapter 371.

[182] **SECTION 3. AMENDMENT.** Subsection 2 of section 43-42-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The board consists of seven members appointed by the governor. Four members must be respiratory therapists, chosen from a list of eight respiratory therapists supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint ~~two members~~ one member to be ~~representatives~~ a representative of the general public. One member must be a registered polysomnographic technologist chosen from a list of candidates recommended to the governor by the association of polysomnographic technologists. Members are appointed for terms of three years. Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.

SECTION 4. AMENDMENT. Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

3. The board shall license as a temporary respiratory therapist any applicant whom the board determines to be qualified to perform duties as a temporary respiratory therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of seventy dollars for the issuance of a temporary respiratory therapist license.

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[182] Section 43-42-02 was also amended by section 2 of House Bill No. 1280, chapter 371.

4. The board shall license as a registered polysomnographic technologist any applicant whom the board determines to be qualified to perform the duties of a registered polysomnographic technologist. In making this determination, the board shall require evidence that the applicant has complied with the rules adopted by the board under section 5 of this Act. The board shall establish fees not in excess of seventy dollars for issuance and for renewal of a registered polysomnographic technologist license.

5. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.

~~5.~~ 6. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:

a. Is not qualified or competent to perform the duties of a registered respiratory therapist, a certified respiratory therapist, ~~or~~ a temporary respiratory therapist, or a registered polysomnographic technologist.

b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.

c. Has been found by the board to have been grossly negligent as a registered respiratory therapist, certified respiratory therapist, ~~or a~~ temporary respiratory therapist, or registered polysomnographic technologist.

d. Has engaged in conduct as a registered respiratory therapist, certified respiratory therapist, ~~or a~~ temporary respiratory therapist, or registered polysomnographic technologist which is unethical, unprofessional, or detrimental to the health of the public.

e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.

f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.

g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.

h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.

~~6.~~ 7. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services

from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.

~~7.~~ 8. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board. Temporary licenses may not be renewed.

~~8.~~ 9. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 5. A new section to chapter 43-42 of the North Dakota Century Code is created and enacted as follows:

Polysomnography practice.

1. After December 31, 2005, a person may not practice, nor represent that the person is able to practice, polysomnography unless licensed under this chapter as a registered polysomnographic technologist. A registered polysomnographic technologist may not practice respiratory care except as may be authorized by rules adopted by the board. A registered polysomnographic technologist is limited in practice to polysomnography within the scope of practice and limitations as provided by rules adopted by the board.

2. The board shall adopt rules regulating registered polysomnographic technologists and establishing the scope of practice of a registered polysomnographic technologist. The rules may include requirements for examination requirements for licensure, education requirements for licensure, continuing courses of study in polysomnography, and student practice.

3. This section does not prohibit a respiratory therapist from practicing respiratory care.

SECTION 6. ALLIED HEALTH PROFESSIONS BOARD - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of creating an allied health professions board to regulate the practice of members of allied health professions. The study must include consideration of the feasibility and desirability of a North Dakota allied health professions board entering joint professional licensure agreements with neighboring states. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act becomes effective on October 1, 2006.

SECTION 8. EXPIRATION DATE. Section 2 of this Act is effective through September 30, 2006, and after that date is ineffective.

SECTION 9. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 12, 2005
Filed April 13, 2005

CHAPTER 372

SENATE BILL NO. 2388

(Senators G. Lee, Brown, Kilzer)
(Representative Porter)

RESPIRATORY THERAPY PRACTICE

AN ACT to create and enact a new subsection to section 43-42-05 and a new section to chapter 43-51 of the North Dakota Century Code, relating to reciprocity for the practice of respiratory therapy and for foreign practitioners in emergency situations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-42-05 of the North Dakota Century Code is created and enacted as follows:

This chapter does not prohibit an individual licensed or registered as a respiratory therapist in another state or country from providing respiratory care in an emergency in this state, providing respiratory care as a member of an organ harvesting team, or from providing respiratory care on board an ambulance as part of the ambulance treatment team.

SECTION 2. A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

Foreign practitioners - Emergency practice exemption. Notwithstanding contrary provisions of law, a foreign practitioner may practice in an emergency in this state, practice as a member of an organ harvesting team, or practice on board an ambulance as part of the ambulance treatment team.

Approved April 22, 2005
Filed April 25, 2005

CHAPTER 373

SENATE BILL NO. 2073

(Human Services Committee)
(At the request of the Board of Clinical Laboratory Practice)

CLINICAL LABORATORY PERSONNEL LICENSURE

AN ACT to create and enact a new subsection to section 43-48-03 of the North Dakota Century Code, relating to exemptions from clinical laboratory personnel licensures; and to amend and reenact subsection 6 of section 43-48-03 of the North Dakota Century Code, relating to clinical laboratory personnel licensure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[183] **SECTION 1. AMENDMENT.** Subsection 6 of section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

6. Phlebotomy personnel performing phlebotomy procedures ~~and bedside screening tests~~.

[184] **SECTION 2.** A new subsection to section 43-48-03 of the North Dakota Century Code is created and enacted as follows:

An individual supervised by an individual who is licensed by the board and who performs tests and uses methods identified by rules adopted by the board.

Approved April 4, 2005
Filed April 4, 2005

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[183] Section 43-48-03 was also amended by section 2 of Senate Bill No. 2073, chapter 373.

[184] Section 43-48-03 was also amended by section 1 of Senate Bill No. 2073, chapter 373.

CHAPTER 374

HOUSE BILL NO. 1527

(Representatives DeKrey, Horter, Price)
(Senators J. Lee, Traynor, Triplett)
(Approved by the Delayed Bills Committee)

MILITARY EXCEPTION FOR OCCUPATIONAL CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-51 of the North Dakota Century Code, relating to military service member exceptions to occupational licensing board license renewal requirements; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

Members of military - License renewal.

1. A board shall adopt rules to provide for or shall grant on a case-by-case basis exceptions to the board's license renewal requirements in order to address renewal compliance hardships that may result from:

   a. Activation of more than thirty days of a licensee who is a member of the national guard or armed forces of the United States.

   b. Service in the theatre or area of armed conflict by a licensee who is a member of the regular active duty armed forces of the United States.

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

SECTION 2. APPLICATION. A board shall make a case-by-case exception determination under section 1 of this Act which applies to a licensure renewal that preceded the effective date of this Act.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 375

SENATE BILL NO. 2269

(Senators Grindberg, Erbele, Flakoll)
(Representatives Hawken, N. Johnson, Potter)

MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

AN ACT to create and enact chapter 43-53 of the North Dakota Century Code, relating to creation of the North Dakota marriage and family therapy licensure board; to provide a penalty; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 43-53 of the North Dakota Century Code is created and enacted as follows:

43-53-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Advertise" includes the issuing or causing to be distributed any card, sign, or device to any person; the causing, permitting, or allowing any sign or marking in or on any building, radio, or television; or advertising by any other means designed to secure public attention.

2. "Board" means the North Dakota marriage and family therapy licensure board.

3. "Licensed marriage and family therapist" means an individual who holds a valid license issued under this chapter.

4. "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders.

5. "Practice of marriage and family therapy" means the rendering of marriage and family therapy services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

6. "Qualified supervision" means the supervision of clinical services, in accordance with standards established by the board, by an individual who has been recognized by the board as an approved supervisor.

7. "Recognized educational institution" means any educational institution that grants a baccalaureate or higher degree that is recognized by the board and by a regional accrediting body, or a postgraduate training

institute accredited by the commission on accreditation for marriage and family therapy education.

8. "Use a title or description of" means to hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, calling cards, or other instruments of professional identification.

43-53-02. Representation to the public. Effective January 1, 2006, except as specifically provided otherwise under this chapter, only an individual licensed under this chapter may use the title "marriage and family therapist" or the abbreviations "MFT". A licensee shall display prominently the licensee's license at the principal place of business of the licensee.

43-53-03. Exemptions.

1. An individual is exempt from the requirements of this chapter if:

   a. The individual is practicing marriage and family therapy as part of that individual's duties as an employee of a recognized academic institution or a governmental institution or agency while performing those duties for which the individual is employed by such a facility, institution, or agency.

   b. The individual is a marriage and family therapy intern or individual preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility or supervisory arrangement recognized and approved by the board if:

      (1) The individual is a student in a master's program of marriage and family therapy; and

      (2) The individual is designated by a title such as "marriage and family therapy intern", "marriage therapy intern", "family therapy intern", or other title clearly indicating such training status.

   c. The individual is a member of the clergy of any religious denomination and providing services within the scope of ministerial duties.

   d. The individual is a volunteer for or is employed by a nonprofit agency or community organization and the individual does not hold out to the public that the individual is a licensed marriage and family therapist.

2. This chapter does not prevent any person licensed by the state from doing work within the standards and scope of practice of that person's profession, including the practice and advertising of marriage and family therapy services.

43-53-04. Marriage and family therapist licensure board.

1. The North Dakota marriage and family therapist licensure board consists of five members. The governor shall appoint the board members to serve terms of four years, except for those first appointed

one member must continue in office for two years, two for three years, and two, including the chairman, for four years.

2. The governor shall appoint members of the board from among individuals who meet the following qualifications:

   a. At least three members must be licensed practicing marriage and family therapists; and each must have been for at least five years immediately preceding appointment actively engaged as marriage and family therapists in rendering professional services in marriage and family therapy; in the education and training of master's, doctoral, or postdoctoral students of marriage and family therapy; or in marriage and family therapy research. A member under this subdivision must have spent the majority of the time devoted by that member to such activity during the two years preceding appointment residing in this state.

   b. At least one member must be a representative of the general public and may not have any direct affiliation with the practice of marriage and family therapy or another mental health profession.

   c. The initial appointees, with the exception of any representative of the general public, are deemed to be and become licensed practicing marriage and family therapists immediately upon appointment and qualification as members of the board.

3. The governor shall nominate a new member to fill a vacancy on the board within thirty days of the vacancy. A member chosen to fill a board vacancy must be appointed for the unexpired term of the board member whom that member is succeeding. Upon the expiration of a member's term of office, a board member shall continue to serve until a successor is appointed. An individual may not be appointed more than once to fill an unexpired term or appointed to more than two consecutive full terms. A member may not serve as chairman for more than four years. The appointment of any member of the board automatically terminates thirty days after the date the member is no longer a resident of this state.

4. The governor may remove any member of the board or the chairman from the position as chairman for neglect of duty or malfeasance or conviction of a felony or crime of moral turpitude while in office, but for no other reason. A member may not be removed until after a hearing on the charges and at least thirty days' prior written notice to such accused member of the charges and of the date fixed for such hearing.

5. A board member may not participate in any matter before the board in which that member has a pecuniary interest, personal bias, or other similar conflict of interest. A board member shall serve without compensation but is entitled to be reimbursed for the member's actual and necessary expenses incurred in the performance of official board business.

43-53-05. Board powers and duties.

1. The board shall administer and enforce this chapter. The board shall adopt rules as the board determines necessary.

2. The board shall examine and pass on the qualifications of all applicants and shall issue a license to each successful applicant. The board shall adopt a seal which must be affixed to all licenses issued by the board.

3. The board may authorize expenditures determined necessary to carry out this chapter.

4. Four of the members of the board constitute a quorum. The board may employ attorneys, experts, and other employees as necessary for the proper performance of the board's duties.

5. The board shall adopt a nationally recognized code of ethics for the practice of marriage and family therapy.

6. The board shall establish continuing education requirements for license renewal.

7. The board shall publish an annual list of the names and addresses of all individuals licensed under this chapter.

43-53-06. Licenses.

1. Each individual desiring to obtain a license as a practicing marriage and family therapist shall submit an application to the board, upon such form and in such manner as the board prescribes. An applicant shall furnish evidence that the applicant:

   a. Is of good moral character;

   b. Has not engaged in any practice or conduct that would be a ground for revoking a license under this chapter; and

   c. Is qualified for licensure pursuant to the requirements of this chapter.

2. Before January 1, 2008, an applicant may be issued a license by the board if the applicant meets the qualifications set forth in subdivisions a and b of subsection 1 and provides evidence to the board that the applicant meets educational and experience qualifications as follows:

   a. An appropriate graduate degree, as defined by the board, from a regionally accredited institution so recognized at the time of granting such degree.

   b. At least five years of clinical experience in the practice of marriage and family therapy, and membership or certification by an appropriate professional organization, as defined by the board.

3. After December 31, 2007, an applicant may be issued a license by the board if the applicant meets the qualifications set forth in subsection 1 and provides satisfactory evidence to the board that the applicant:

   a. Holds a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution, or a graduate degree in an allied field from a recognized educational institution and graduate level coursework which is equivalent to a

master's degree in marriage and family therapy, as determined by the board.

b. Has successfully completed two calendar years of work experience in marriage and family therapy under qualified supervision following receipt of a qualifying degree.

c. Has passed a national examination administered by the board.

43-53-07. Examination.

1. The board shall conduct an examination at least once a year at a time and place designated by the board. Examinations may be written or oral as determined by the board. In any written examination each applicant must be designated so that the applicant's name is not disclosed to the board until the examination has been graded. Examinations must include questions in such theoretical and applied fields as the board determines most suitable to test an applicant's knowledge and competence to engage in the practice of marriage and family therapy. An applicant is deemed to have passed an examination upon affirmative vote of at least four members of the board.

2. Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.

43-53-08. Reciprocal licenses. The board shall issue a license by examination of credentials to any applicant licensed or certified as a marriage and family therapist in another state for which the requirements for the license or certificate are equivalent to or exceed the requirements of this state, provided the applicant submits an application on forms prescribed by the board and pays the original licensure fee prescribed by this chapter.

43-53-09. Fees. A fee, as determined by the board, must be paid to the board for original licensure. A license is valid for two years and must be renewed biennially, with the renewal fee being determined by the board. Any applicant for renewal of a license that has expired must be required to pay a reregistration fee determined by the board. The fees established under this section must be adequate to establish and maintain the operation of the board.

43-53-10. Disciplinary proceedings.

1. The board may deny, revoke, or suspend a license granted under this chapter on the following grounds:

a. Conviction by a court of competent jurisdiction of an offense that the board determines to be of such a nature as to render the licensee unfit to practice marriage and family therapy. The board shall compile, maintain, and publish a list of such offenses.

b. Violation of ethical standards of such a nature as to render the licensee unfit to practice marriage and family therapy. The board shall publish such ethical standards.

c. Fraud or misrepresentation in obtaining a license.

d. Any just and sufficient cause that renders a licensee unfit to practice marriage and family therapy.

2. A license may be denied, suspended, or revoked for the reasons set forth in subsection 1. A license may not be denied, suspended, or revoked under this section except by majority vote of the full board, notwithstanding any other provision of this chapter.

3. Any person may file a complaint with the board seeking denial, suspension, or revocation of a license issued or to be issued by the board. The complaint must be in a form prescribed by the board and must be verified under oath by the complainant or a duly authorized officer of a complainant. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a license, the board promptly shall institute a hearing. If the board determines a complaint does not state facts warranting a hearing, the complaint may be dismissed. The board may institute a hearing for denial, suspension, or revocation of a license on its own motion.

4. Any person may be permitted to intervene and participate in board hearings on denial, suspension, or revocation of licenses upon a showing of an interest in such proceeding.

5. Any individual whose license has been suspended or revoked may apply to the board for vacation of the suspension or reinstatement of the license.

43-53-11. Limitations of practice - Divorce proceedings.

1. If both parties to a marriage have obtained marriage and family therapy by a licensed marriage and family therapist, the therapist may not testify in a spousal support or divorce action concerning information acquired in the course of the therapeutic relationship. This subsection does not apply to custody actions.

2. There is no monetary liability on the part of and no cause of action may arise against any licensee in failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except if the patient has communicated to the licensee a serious threat of physical violence against a reasonably identifiable victim or victims.

3. The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified under subsection 2. The duty is discharged by the licensee if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

4. No monetary liability and no cause of action may arise under this chapter against any licensee for confidences disclosed to third parties in an effort to discharge a duty arising under subsection 2 according to subsection 3.

43-53-12. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the fiscal impact and the feasibility and desirability of establishing an umbrella licensing organization for a group consisting of counselors, psychologists, marriage and family therapists, and social workers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 376

HOUSE BILL NO. 1507

(Representatives Sitte, Keiser, Martinson)
(Senator Kringstad)

HOME INSPECTOR REGISTRATION

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the registering of home inspectors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Client" means a person that engages or seeks to engage the services of a home inspector for a home inspection.

2. "Home inspection" means the process by which a home inspector provides a nonintrusive, visual examination and written evaluation of the heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, and exterior and interior components of a residential building. The term does not include an examination of items that are concealed or not readily accessible or identification of concealed conditions or defects.

3. "Home inspector" means an individual registered under this chapter to conduct home inspections.

4. "Registrar" means the secretary of state.

5. "Residential building" means a structure consisting of not more than four family dwelling units.

Home inspector registration required - Penalty. The registrar shall issue and renew registrations to home inspectors pursuant to this chapter. An individual may not perform a home inspection for compensation unless registered under this chapter. An individual who violates this chapter is guilty of a class B misdemeanor.

Registering of home inspectors. An applicant for a registration as a home inspector shall file a written application in the form prescribed by the registrar. An applicant:

1. Must be at least eighteen years of age;

2. Shall submit proof of satisfactory completion of an examination on home inspection offered by the American society of home inspectors, the national association of home inspectors, the national association of certified home inspectors, the examination board of professional home inspectors, or the international code council;

3. Shall submit proof of current errors and omissions insurance coverage in an amount of one hundred thousand dollars or more covering all home inspection activities; and

4. Shall pay a fee of two hundred dollars.

Exceptions to registration requirements. The registration requirements of this chapter do not apply to:

1. An individual employed as a code enforcement official by the state or a political subdivision when acting within the scope of that employment.

2. An individual licensed, certified, or registered under this title when acting within the scope of practice of that individual's profession or occupation.

3. An individual engaged as an insurance adjuster when acting within the scope of that engagement.

Renewal of registration. A registration issued under this chapter expires June thirtieth of each calendar year and may be renewed upon submission of a renewal fee of fifty dollars and provision of proof of continuous insurance coverage as required for registration. The application for renewal must be postmarked before July first of each year. The registrar shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. The cancellation must be without notice or opportunity for hearing. An individual whose registration has been canceled and who desires to reregister must file an initial application, pay the initial application fee, and provide proof of current errors and omissions insurance. An individual registered under this chapter may not engage in any activity under this chapter after June thirtieth of any year unless that individual has a valid registration.

Approved April 14, 2005
Filed April 18, 2005