

**FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1267**

Introduced by

Representatives Warrey, Louser, M. Ruby, Vollmer

Senators Barta, Roers

1 A BILL for an Act to amend and reenact sections 43-13-01, 43-13-02, 43-13-05, 43-13-07,  
2 43-13-08, 43-13-13, 43-13-13.2, 43-13-13.3, 43-13-15, 43-13-16, 43-13-17, and 43-13-19 of the  
3 North Dakota Century Code, relating to optometrist licensure.

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

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

7 **43-13-01. Definitions.**

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

- 9 1. "Board" means the North Dakota state board of optometry.
- 10 2. "Diagnosis and treatment" means the determination, interpretation, and treatment of  
11 any visual, muscular, neurological, interpretative, or anatomical anomaly of the eye  
12 which may be aided, relieved, or corrected through visual training procedures or  
13 through the use of lenses, prisms, filters, ophthalmic instruments, pharmaceutical  
14 agents, or combinations thereof, held either in contact with the eye, or in frames or  
15 mountings, as further authorized by this chapter. Laser therapy and the use of invasive  
16 surgery are not permitted under this chapter, except superficial foreign bodies may be  
17 removed and primary care procedures may be performed.
- 18 3. ~~"Optometry" means a primary health care profession whose practitioners are engaged~~  
19 ~~in the evaluation of disorders of the human eye and the examination, diagnosis, and~~  
20 ~~treatment thereof, together with its appendages~~Distant site provider" means a provider  
21 of optometric services through telemedicine from a site other than the patient's

1           origination site. A distant site provider must hold an active license to practice  
2           optometry in this state.

3           4. "Optometric services" means any evaluation, examination, diagnosis, or treatment  
4           provided for a patient within the scope of practice of optometry. The term includes the  
5           prescription of pharmaceutical agents by a provider to a patient.

6           5. "Pharmaceutical agent" means diagnostic pharmaceutical agents or therapeutic  
7           pharmaceutical agents. The term includes nonscheduled pharmaceutical agents,  
8           except for acetaminophen with thirty milligrams of codeine, that have documented use  
9           in the treatment of ocular-related disorders or diseases. As used in this subsection:

10          a. "Diagnostic pharmaceutical agents" means pharmaceutical agents administered  
11           for the evaluation and diagnosis of disorders of the human eye including  
12           anesthetics, mydriatics, myotics, cycloplegics, diagnostic dyes, diagnostic stains,  
13           and pharmaceutical agents to evaluate abnormal pupil responses.

14          b. "Therapeutic pharmaceutical agents" includes topically administered and  
15           prescribed pharmaceutical agents for treatment of ocular-related disorders or  
16           disease, locally administered pharmaceutical agents for primary eye care  
17           procedures, oral anti-infective agents, oral antihistaminic agents, and oral  
18           analgesics for the treatment of ocular-related disorders or diseases.

19          ~~5-6.~~ "Practicing optometry" means:

20           a. Displaying a sign or in any way advertising as an optometrist.

21           b. Employing any means for the measurement of the powers of vision or the  
22           adaptation of lenses for the aid thereof.

23           c. Engaging in any manner in the practice of optometry.

24           **SECTION 2. AMENDMENT.** Section 43-13-02 of the North Dakota Century Code is  
25           amended and reenacted as follows:

26           **43-13-02. Persons exempt from provisions of chapter.**

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

28           1. Persons who sell spectacles, eyeglasses, or other articles of merchandise without  
29           attempting to practice optometry.

30           2. Student interns who are currently enrolled in an optometry school or college  
31           accredited by the accreditation council on optometric education of the American

1           optometric association, or its successor agency, or who have graduated no more than  
2           ~~threesix~~ months prior, and are under the immediate and direct supervision of a  
3           licensed optometrist.

4           3. Physicians and surgeons licensed under chapter 43-17.

5           **SECTION 3. AMENDMENT.** Section 43-13-05 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **43-13-05. ~~Secretary~~Executive director of board - Duties - Record - Custodian of fees -**  
8 **Report.**

9           The ~~secretary~~executive director of the board, or the ~~secretary's~~executive director's  
10 designee, has the following duties:

- 11           1. Keep a full record of the proceedings of the board.
- 12           2. Be custodian of all fees coming into the possession of the board.
- 13           3. At such times as may be required by the board, furnish a complete statement of  
14           receipts and disbursements under oath, together with vouchers, receipts, and such  
15           other evidence of the receipts and disbursements as may be required by the board.

16           **SECTION 4. AMENDMENT.** Section 43-13-07 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **43-13-07. Compensation and expenses of board members.**

19           A member of the board shall receive as compensation for each day the member actually is  
20 engaged in performing the duties of office a per diem as established by the board, mileage and  
21 travel expenses as are provided for in section 54-06-09, ~~and additional allowance for other~~  
22 ~~necessary expenses incurred in attending said meeting not to exceed five dollars per day. All~~  
23 ~~funds collected or received by the board must be deposited and disbursed in accordance with~~  
24 ~~section 54-44-12.~~

25           **SECTION 5. AMENDMENT.** Section 43-13-08 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **43-13-08. ~~Secretary~~Executive director of board - Compensation.**

28           The ~~secretary~~executive director of the board shall receive for clerical expenses and other  
29 expenses of the board an allowance, and a salary or other compensation, as the board shall  
30 determine.

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

3       **43-13-13. Duties of board.**

4       The board has the following duties:

- 5       1. To enforce the provisions and carry out the purposes of this chapter.
- 6       2. To make and enforce such rules and regulations consistent with law as may be  
7       necessary for the proper performance of its duties; the effective enforcement of this  
8       chapter; the reasonable regulation of the profession of optometry and the practice  
9       thereof by persons licensed under this chapter; and to protect the health, welfare, and  
10       safety of the citizens of this state.
- 11       3. To proceed in the courts of this state by injunction when considered necessary to  
12       restrain any violation of this chapter.
- 13       4. To establish the following by rule:
  - 14       a. Application fees;
  - 15       b. License fees;
  - 16       c. Renewal fees;
  - 17       d. Late fees;
  - 18       e. Endorsement fees;
  - 19       f. Licensure verification fee;
  - 20       g. Decorative wall certificate fee; and
  - 21       h. Continuing education fees.

22       **SECTION 7. AMENDMENT.** Section 43-13-13.2 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24       **43-13-13.2. Practice of optometry - ~~Certification requirements~~ --**

25       **~~Notification~~Requirements to practice optometry - Informed consent.**

- 26       1. Any person engaged in visual training procedures or who employs or prescribes  
27       lenses, prisms, filters, ophthalmic instruments, or combinations thereof, held either in  
28       contact with the eye, or in frames or mounting, to aid, relieve, or correct any visual or  
29       ocular anomaly, or holds out as being able to do so, is deemed to be engaged in the  
30       practice of optometry.

- 1           2. ~~Before any optometrist may prescribe and administer pharmaceutical agents in the~~  
2           ~~treatment and management of ocular diseases, the optometrist must first be certified~~  
3           ~~or qualify for certification in the use of diagnostic pharmaceutical agents. For additional~~  
4           ~~certification to prescribe and administer pharmaceutical agents in the treatment and~~  
5           ~~management of ocular disease, the board shall require at least seventy-six hours of~~  
6           ~~didactic instruction and twenty-four hours of clinical application of pharmaceutical~~  
7           ~~agents for the treatment and management of ocular diseases. The course for~~  
8           ~~therapeutic certification must be provided by an institution accredited by a regional or~~  
9           ~~professional accrediting organization that is recognized and approved by the United~~  
10          ~~States department of education or the council on postsecondary accreditation.~~
- 11          3. An optometrist may not dispense therapeutic pharmaceutical agents, except an  
12          optometrist may:
- 13           a. Provide a patient a drug sample at no cost to the patient; or  
14           b. Sell contact lenses or ophthalmic devices that are classified by the federal food  
15           and drug administration as a drug.
- 16          4.3. ~~The board shall provide the board of pharmacy upon request a list of licensed~~  
17          ~~optometrists certified in the use of pharmaceutical agents.~~An optometric telemedicine  
18          provider-patient relationship is established when a patient seeks optometric services  
19          from a provider, and the provider agrees to provide optometric services to the patient,  
20          except in an emergency. The provider-patient relationship may be expressly created or  
21          created through implication; however, the provider-patient relationship is not created  
22          through receipt of patient health information by the provider unless a prior provider-  
23          patient relationship exists. The initial patient relationship must be established through  
24          an eye examination conducted by a licensed optometrist with a physical location in this  
25          state.
- 26          4. A licensed optometrist may act as a distant site provider and use telemedicine to  
27          provide care in accordance with standards of practice established by the board by  
28          rule. Telemedicine services may include consultation, diagnosis, and treatment for  
29          ocular diseases, provided that the optometrist complies with the regulations under this  
30          section. Before providing any optometric services to a patient via telemedicine, the

1           provider first shall provide appropriate verification of the provider's identification,  
2           licensure, and current contact information.

3           5. Informed consent regarding the optometric services to be provided via telemedicine  
4           must include, at a minimum, information regarding the provider's technology used to  
5           provide optometric services via telemedicine and how to mitigate or resolve any  
6           technological disconnection or issue.

7           **SECTION 8. AMENDMENT.** Section 43-13-13.3 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **43-13-13.3. Standard of care ~~When consultation with physician required.~~**

10          4. An optometrist certified by the board in the use of pharmaceutical agents as provided in  
11 this chapter must be held to the same standard of care in the use of such agents as are  
12 physicians licensed by the North Dakota board of medicine.

13          2. ~~Any optometrist authorized by the board to use pharmaceutical agents shall consult~~  
14           ~~with a physician duly licensed to practice medicine when any diseased or pathological~~  
15           ~~conditions of the eye do not respond to treatment. The consultation must be~~  
16           ~~documented in the patient's record.~~

17          **SECTION 9. AMENDMENT.** Section 43-13-15 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19          **43-13-15. Unlawful to practice without license - Sale of glasses - Regulations.**

20          No

21          1. A person may not practice optometry in this state unless the person first obtains a  
22           license and complies with the requirements of this chapter. ~~Eyeglasses, spectacles,~~  
23           ~~and lenses may be vended as merchandise only:~~

24          4. ~~To dealers.~~

25          2. ~~From permanently located and established places of business in this state.~~

26          ~~Any licensed optometrist, however, may fit and vend eyeglasses, spectacles, and lenses at any~~  
27           ~~place in this state.~~ Notwithstanding any other provision of law, it is unlawful for any  
28           person, or any entity other than a licensed optometrist or a licensed physician to  
29           ~~dispense, fit, or prescribe to the public contact lenses, or any medical appliance~~  
30           having direct contact with the cornea of the eye.

1       **SECTION 10. AMENDMENT.** Section 43-13-16 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **43-13-16. Examination required - When given.**

4       Before any person is granted a license to practice optometry in this state, the person must  
5 pass an examination required by the board by rule. ~~The examination may be conducted at such~~  
6 ~~times and places as are prescribed by the board.~~

7       **SECTION 11. AMENDMENT.** Section 43-13-17 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9       **43-13-17. Application for licensure - Contents - Educational requirements - Fee.**

10       1. Any person desiring to take the examination for or to secure a license to practice  
11 optometry in this state shall file with the ~~secretary~~executive director of the board a  
12 ~~written~~an application in the form prescribed by the board. ~~An application for admission~~  
13 ~~by examination must be filed at least fifteen days before the date of the examination.~~

14       The applicant also shall furnish satisfactory proof that the applicant:

15       1. a. Is at least eighteen years of age;

16       2. b. Is a person of good moral character; and

17       3. c. Is a graduate of an optometry school or college accredited by the council on  
18 optometric education.

19       2. The applicant shall pay to the ~~secretary~~executive director of the board a ~~registration~~an  
20 application fee of a reasonable sum fixed by the board by rule.

21       **SECTION 12. AMENDMENT.** Section 43-13-19 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23       **43-13-19. License - When issued - Fee.**

24       Every applicant for a license to practice optometry in this state who meets the standards  
25 required for licensure, including successfully passing the required examination, must be  
26 licensed upon payment to the ~~secretary~~executive director of the board of a reasonable sum  
27 fixed by the board.