

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 504

HOUSE BILL NO. 1256  
(Representative Lindgren)  
(Senator Peterson)

### BARBER QUALIFICATIONS

AN ACT to amend and reenact section 43-04-31 of the North Dakota Century Code, relating to qualifications required to be a registered barber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-04-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-04-31. Qualifications for certificate of registration as registered barber. A person is qualified to receive a certificate of registration to practice barbering if ~~he~~ the person:

1. Is qualified in accordance with the provisions of section 43-04-23;
2. Is at least eighteen years of age;
3. Is of good moral character and temperate habits;
4. Has practiced as a registered apprentice for a period of ~~fifteen~~ twelve months under the immediate supervision of a registered barber; and
5. Has passed a satisfactory examination conducted by the board to determine ~~his~~ that person's fitness to practice barbering.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 505

HOUSE BILL NO. 1255  
(Representative Lindgren)  
(Senator Peterson)

### BARBER'S LICENSE FEES

AN ACT to create and enact a new subsection to section 43-04-42 of the North Dakota Century Code, relating to the fee for restoration of barbershop licenses; and to amend and reenact subsections 5, 7, and 10 of section 43-04-42 of the North Dakota Century Code, relating to renewal fees for barbers' certificates and annual license fees for barbershops; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 7, and 10 of section 43-04-42 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. For renewal of master barber's certificate, ~~twenty-five~~ thirty-five dollars.
7. For renewal of apprentice barber's certificate, ~~fifteen~~ twenty dollars.
10. ~~Annual establishment fees~~ For issuance of an annual barbershop license, fifteen dollars, to be paid by each shopowner in advance, five dollars for the first barber chair and two dollars for each additional barber chair which is usable in the shop.

SECTION 2. A new subsection to section 43-04-42 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For restoration of an expired barbershop license, a ten dollar penalty fee in addition to the annual license fee.

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

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 506

HOUSE BILL NO. 1207

(Committee on Industry, Business and Labor)

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

### CHIROPRACTIC PRACTICE

AN ACT to create and enact two new sections to chapter 43-06 of the North Dakota Century Code, relating to powers of the state board of chiropractic examiners; to amend and reenact sections 43-06-01, 43-06-02, 43-06-03, 43-06-04, 43-06-08, 43-06-09, 43-06-10, 43-06-10.1, 43-06-11, 43-06-12, 43-06-13, 43-06-15, 43-06-16, and 43-06-19 of the North Dakota Century Code, relating to regulation of the practice of chiropractic; and to repeal section 43-06-14 of the North Dakota Century Code, relating to recording of licenses to practice chiropractic with registers of deeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "The practice of chiropractic" ~~shall mean~~ means the examination, evaluation, and diagnosis, by means including x-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor, preparatory to the treatment of patients, and the treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature, and includes the practice of physiotherapy, electrotherapy, and hydrotherapy as, and all other procedures taught by chiropractic schools and colleges, and the adjustment of any displaced tissue of any kind or nature accredited by the council on chiropractic education or its successor, but ~~shall~~ does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.
2. "Board" ~~shall mean~~ means the state board of chiropractic examiners.

SECTION 2. AMENDMENT. Section 43-06-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-02. Who exempt from the provisions of this chapter. This chapter shall not apply to:

1. Chiropractors from the District of Columbia, or other states, territories, or countries who are in actual consultation in this state.
2. Students duly enrolled in an a college of chiropractic approved and accredited college of chiropractic by the council on chiropractic education, or its successor, who have completed chiropractic studies of at least nine quarters or the equivalent if the school is on some other basis other than quarters and who are continuing their training under a preceptorship program and performing the duties of an intern under the supervision of a chiropractor licensed in the state of North Dakota who has received approval to supervise such internship by the board and said students having received approval to participate in such internship by the board.
3. A graduate of any approved and accredited college of chiropractic who has for the first time made application for license by examination to practice chiropractic in the state of North Dakota, may and who, under the supervision of a North Dakota licensed chiropractor, perform performs the duties of an intern, provided that a supervising chiropractor has certified to the board that the graduate is of good character and competent chiropractic ability. The authorization granted by the board shall terminate on the day of issuance of a chiropractic license after the North Dakota chiropractic examination for which application is made; except such authorization granted shall terminate when the results of that North Dakota chiropractic examination are announced for those graduates who do not receive a passing grade on that examination within fifteen months from the date issued by the board.
4. Nothing in this Act is to be construed to impinge upon the practice of medicine by a physician and surgeon or an osteopathic physician and surgeon who has adequate training in the use of manipulative and adjustive procedures of the spine and appendicular skeleton.

SECTION 3. AMENDMENT. Section 43-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-03. State board of chiropractic examiners - Members - Appointment - Qualifications. The state board of chiropractic examiners shall consist of five members appointed by the governor. Each person appointed ~~shall~~ must:

1. Be a licensed practicing chiropractor of integrity and ability Have a license to practice chiropractic in North Dakota.
2. Be Have been a resident of this state and have practiced chiropractic in this state for at least five consecutive years immediately before appointment to the board.
3. Have the degree of doctor of chiropractic from a recognized school Remain a resident of this state and continue in active practice in this state during the term of office.
- 4- Have practiced chiropractic continually in this state for at least two years.

~~Not all of the appointed members of the board shall be graduates of the same school or college of chiropractic.~~

SECTION 4. AMENDMENT. Section 43-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-04. Board of chiropractic examiners - Members - Term of office. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office for a term of five years and until ~~his~~ the member's successor is appointed and qualified. The terms of office of the members of the board shall be so arranged that one term and only one shall expire on the thirty-first day of ~~December~~ August of each year. Vacancies on the board shall be filled by appointment by the governor. When a vacancy occurs on the board by expiration of the term, death, or resignation of a member, or removal for other cause, the North Dakota chiropractic association shall nominate, by procedure adopted in the bylaws of said association, to the governor three qualified persons for each vacancy. The governor shall appoint a member to fill the vacancy on the board from the three nominees.

SECTION 5. A new section to chapter 43-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Powers of board.

1. The board shall administer the provisions of this chapter and the administrative rules of the board relating to the practice of chiropractic. It shall have all powers, rights, and duties as provided in chapter 28-32.
2. The board shall pass upon the qualifications of applicants for licenses to practice chiropractic. It shall examine and renew the licenses of duly qualified applicants.
3. The board shall regulate the practice of chiropractic and shall enforce the provisions of this chapter and the rules of the board. The board shall investigate complaints of violations and cause the prosecution of persons violating the provisions of this chapter or the administrative rules of the board.
4. The board may appoint a peer review committee and employ such personnel and incur such expenses as may be necessary for the performance of the board's duties and the enforcement of this chapter.
5. The board may inspect upon complaint or probable cause, at all reasonable times, any chiropractic office or place where chiropractic services are performed.
6. The board may adopt and amend administrative rules, consistent with the provisions of this chapter governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter, and proper performance of its duties, including:
  - a. A code of ethical conduct governing the practice of chiropractic.

- b. Requirements, standards, and examinations to determine the intellectual, educational, scientific, technical, and professional qualifications of applicants for license.
- c. Matters pertaining to the content and conduct of examination.
- d. Matters pertaining to the operation and registration of chiropractic facilities.
- e. Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic.
- f. The quantity, type, and character of postgraduate study to be done by any licensee in order to comply with the provisions of this chapter.
- g. Set policies and procedures on what constitutes professional or unprofessional conduct.

SECTION 6. AMENDMENT. Section 43-06-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-08. License required - Application - Examination required - Fee. No person ~~shall~~ may practice chiropractic in this state unless that person has a license from the state board of chiropractic examiners. Any person who desires a license shall apply to the board and submit to an examination. Each applicant shall present with the application a diploma from a college of chiropractic accredited by the council on chiropractic education or its successor, or a photocopy of the same, or a certificate from the college stating that the applicant is a student in good standing in the student's last trimester, and proof that the applicant has the required qualifications. The board may allow an applicant to take the examination during the period that the applicant is attending the applicant's last trimester but may not issue a license until the applicant has graduated and has provided the board with a diploma as provided in this section. Before beginning the examination, the applicant shall pay to the secretary-treasurer of the board a fee, to be determined by the board from time to time, of an amount not to exceed two hundred dollars. The examination shall be held twice yearly at intervals of approximately six months with date and place to be determined by the board.

SECTION 7. AMENDMENT. Section 43-06-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-09. Chiropractor - Qualifications. An applicant for examination to practice chiropractic in this state shall have a degree or a certificate proving enrollment in the last trimester of college received from an approved and accredited college of chiropractic where the resident course of instruction is not less than four years of nine months each; or four thousand hours. An approved and accredited college of chiropractic within the meaning of this chapter is a college of chiropractic that is approved by the board and accredited by the council on chiropractic education or its successor.

SECTION 8. AMENDMENT. Section 43-06-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-10. Examination - Subjects covered. The examination for a license to practice chiropractic in this state must be in the manner and form as prescribed by the board from time to time. It must cover the following subjects:

1. Anatomy.
2. Physiology.
3. ~~Symptomatology.~~
4. ~~Diagnosis.~~
5. ~~Nerve tracing.~~
6. ~~4. Nutrition.~~
7. ~~5. Chiropractic Nonsurgical orthopedics.~~
8. ~~6. Chemistry.~~
9. ~~7. Pathology.~~
10. ~~Bacteriology.~~
11. ~~Obstetrics and gynecology.~~
8. Public health.
9. Neurology.
12. ~~10. Chiropractic philosophy jurisprudence.~~
11. ~~11. Chiropractic jurisprudence philosophy, ethics, adjusting, and patient management as taught by approved and accredited colleges of chiropractic.~~
12. X-ray and diagnostic imaging.

SECTION 9. AMENDMENT. Section 43-06-10.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-10.1. National board examination. The board may in its discretion accept all parts one and two of the national ~~examining~~ board examination in lieu of part of an examination for a license, providing all other requirements are met but ~~will~~ shall require examination in-

1. ~~Nutrition.~~
2. ~~Chiropractic orthopedics.~~
3. ~~Nonsurgical gynecology.~~
4. ~~Chiropractic jurisprudence, adjusting, and patient management as taught by approved and accredited colleges of chiropractic.~~

5- ~~X-ray~~ chiropractic jurisprudence and practical examinations.

SECTION 10. AMENDMENT. Section 43-06-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-11. License - When issued - Who issues - Title used by licensed chiropractor. A license to practice chiropractic in this state shall be issued by the board to an applicant who has submitted proof of the required qualifications and passed the required examination. No license to practice chiropractic shall be granted except upon the affirmative vote of at least three of the members of the board. A licensed chiropractor ~~may not use the title physician, or surgeon, but~~ may use the title doctor of chiropractic, chiropractor, chiropractic physician, or D. C.

SECTION 11. AMENDMENT. Section 43-06-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-12. Reexamination - Fee. If an applicant for a license to practice chiropractic fails to pass the examination, the board, within one year after rejection, may permit that person to ~~take a second~~ retake the examination, upon the payment of a fee, to be determined by the board from time to time, of an amount not to exceed two hundred dollars.

SECTION 12. AMENDMENT. Section 43-06-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-13. Term of license - Renewal - Fee - Requirements. A license to practice chiropractic in this state is valid for one year only and must be renewed on or before the first day of September of each year. The fee for renewal of a license must be determined by the board, but may not exceed two hundred dollars. The board, ~~before~~ shall establish by rule the number of hours necessary for annual continuing education. Before it issues a renewal license, the board shall require each applicant who has a license to practice in this state to attend a postgraduate course consisting of at least twelve hours sponsored by a college of chiropractic, accredited by the council on chiropractic education, or its successor and approved by the board, a health-related seminar sponsored by an equally accredited college or university, a medical seminar qualifying for continuing education credits, or to attend at least a two-day session consisting of a minimum of twelve hours of the educational program arranged by the North Dakota chiropractic association and approved by the board. A license which has not been renewed, as a result of nonpayment of annual registration fees required by this chapter or as a result of the failure by licensee to attend the required annual continuing education, may be reinstated upon payment to the board of the amount of renewal fees then in default along with or by certification that the required continuing education has been completed within sixty days after the expiration of the previous license. In either case, the board may charge an additional administrative fee to be fixed by the board not to exceed four hundred dollars. In addition to the payment of fees, the board, after an investigation, may require a chiropractor whose license has not been renewed to submit to a reexamination as to the applicant's qualifications to practice chiropractic before the applicant 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.

SECTION 13. AMENDMENT. Section 43-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:



43-06-15. Grounds for revocation or refusal to grant license suspension of license or other action of the board - Sworn statement - Investigation - Hearing. The board may refuse to grant, or may revoke, a license for any of the following reasons:

1. Dishonorable, unprofessional The board may revoke, suspend, or immoral conduct take such other action as provided in this section regarding the license of any chiropractor in this state who:
  - a. Has a mental or physical condition such that the person is unable to safely engage in the practice of chiropractic.
  - b. Has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision.
  - c. Is suffering from alcoholism or drug addiction which endangers the public by impairing the chiropractor's ability to practice safely.
  - d. Procured the license to practice by fraud or mistake.
  - e. Has engaged in unprofessional or dishonorable conduct, including false or misleading advertising, rendering excessive or inappropriate treatment, or charging unconscionable fees.
  - f. Has been convicted of a crime involving moral turpitude, illegal possession or distribution of drugs, or any crime that would affect the person's ability to practice as a licensed chiropractor. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence.
  - g. Has been aided, assisted, or enabled any unlicensed person to practice chiropractic contrary to this chapter or rule of the board.
  - h. Has engaged in the practice of abortion.
  - i. Has made use of any advertising statement of a character tending to deceive or mislead the public.
  - j. Has failed to maintain a chiropractic facility in safe and sanitary conditions.
  - k. Has incurred a suspension or revocation in another jurisdiction as a result of acts similar to acts described in this section or rule of the board. A certified copy of the suspension or revocation in the other jurisdiction is conclusive evidence.
  - l. Has committed any violation of the provisions of this chapter and the code of ethics or rules as adopted by the board including the failure to submit for physical or mental examination or to provide information as required by the board.
  - m. Has practiced chiropractic while the license to practice was suspended or revoked.

- n. Has, while under probation, violated its terms.
2. **Chronic** Any person, health care facility, business, or **persistent inebriety** organization is immune from civil liability or criminal prosecution for submitting a sworn statement and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations under this chapter. The reports are not public records.
  3. **Mental aberration** Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of this chapter on behalf of the board, including members of any peer review committee, are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.
  4. **Excessive use** A doctor of **narcotics** chiropractic who is the subject of an investigation by, or on behalf of, the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by, or on behalf of, the board relating to the subject of the investigation and providing copies of patient health records, as reasonably requested by the board, to assist the board in its investigation.
  5. **Practice** Any person, including a member of **criminal abortion** the board, may file a sworn statement and other reports and information with any member of the board against a licensed chiropractor charging the chiropractor with any of the offenses or conditions set forth in subsection 1, which statement must set forth a specification of the charges. When the statement has been filed, the board shall make an investigation as provided by subsection 6.
  6. **Violation** When the statement and other reports and information have been filed, the board shall notify the licensed chiropractor of the **provisions** allegations and shall thereafter make an investigation for the purpose of determining whether the allegations in the statement constitute a basis for further proceedings. The investigation must be conducted in such manner and at such time and place as in the judgment of the board will best ascertain the facts. The board may appoint a peer review committee. The board, in order to pursue the investigation, has the power to subpoena and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed chiropractor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that this **chapter** evaluation be secured. The board may examine and review any relevant medical or psychological records, including test results and x-rays relative to the examination or treatment of the licensed chiropractor. A written request from the board constitutes authorization to release information. The medical or psychological information is not public record.
  7. If, based on the investigation or report from a peer review committee, the board has reasonable cause to believe that there is

- a basis for further proceedings, the board shall prepare a complaint and serve it, along with a notice of hearing, on the licensed chiropractor and thereafter proceed with a hearing in the matter under chapter 28-32. All hearings must be held in Bismarck at the state capitol unless the board and the licensed chiropractor agree otherwise.
8. After the hearing, the board, under section 28-32-13, shall make and give notice of its determination or decision as to whether the offenses charged have been committed or the conditions charged to not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:
- a. Revoke the license;
  - b. Suspend the licensee's right to practice for a period not to exceed one year;
  - c. Suspend its judgment of revocation on terms and conditions determined by the board;
  - d. Place the licensee on probation; or
  - e. Take any other disciplinary action which the board in its discretion considers proper, including the ordering of an adjustment to a patient's bill or refund of such amount previously paid, including reasonable interest from the date of the order, to a patient or payor of any unconscionable fees for chiropractic services.
  - f. In addition to the actions imposed in subdivisions a through e, the board may:
    - (1) Require payment of all cost of proceedings resulting in a disciplinary action.
    - (2) Impose a civil penalty not exceeding ten thousand dollars for each separate violation, to deprive the chiropractor of any economic advantage gained by reason of the violation found and to reimburse the board for the cost of the investigation and proceedings.
9. In cases of revocation, suspension, or probation, the board shall record the facts of the case and all actions of the board.
10. On the expiration of a term of suspension, the licensee must be reinstated by the board if the chiropractor applies to the board and furnishes evidence, satisfactory to the board, that the licensee is then of good character and conduct or restored to good health and that the licensee has not practiced chiropractic during the term of suspension and is competent to practice in this state. If the evidence fails to establish those facts to the satisfaction of the board, the board may require the applicant to submit to an examination in accordance with sections 43-06-08 through 43-06-12 or shall proceed to hearing on revocation with notice as provided in subsection 7.

11. Any licensed chiropractor may take corrective action or voluntarily relinquish the chiropractor's license to the board before a formal order of the board on such terms and conditions as may be agreed by the licensed chiropractor and the board.

**The accused shall be furnished a copy of the complaint and given a hearing before the board, in person or by attorney.**

SECTION 14. A new section to chapter 43-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Peer review of services and fees.

1. The board, upon receipt of an inquiry from a patient, a third-party payor, including any governmental agency, or a chiropractor as to whether a chiropractor licensed in this state properly utilized services and rendered or ordered appropriate treatment or services and whether the cost of the treatment was unconscionable for a particular patient, may appoint a peer review committee for the purpose of investigation of the matter and rendering an opinion thereon.
2. The peer review committee must be appointed by the board and function as its agent and may consist of different individuals for review of different cases.
3. The peer review committee shall investigate each inquiry submitted by the board. It shall examine such witnesses, review such patient and business records, and otherwise take whatever action is necessary to best ascertain the facts. It shall transmit all information it possesses to the board and shall report its findings to the board. The board shall furnish copies of the findings to the patient, chiropractor, and third-party payor. The finding of the peer review committee on each inquiry must include a determination of whether the chiropractor properly utilized services and rendered or ordered appropriate treatment or services and whether the cost of the treatment was unconscionable.
4. The determinations of the peer review committee must be presumed valid and may be considered as prima facie evidence in any further proceedings by the board.
5. The acceptance of, or the request of, payment for treatment rendered to a patient by a chiropractor constitutes the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment to the board or peer review committee.
6. The board may adopt rules it considers necessary and appropriate to implement the peer review system and activities established under this chapter.
7. All data and information, including patient records acquired by the board or the peer review committee, in the exercise of its duties and functions, are confidential and closed to the public. All board and peer review committee meetings wherein patient testimony

or records are taken or reviewed are confidential and closed to the public.

8. Any third-party payor, including any governmental agency, making a request under this section may be charged a fee by the board equal to the administration costs of performing the review.

SECTION 15. AMENDMENT. Section 43-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-16. Duties of chiropractor. Every licensed chiropractor practicing in this state shall:

1. Observe all state and municipal regulations relating to the control of contagious and infectious diseases.
2. Sign death and birth certificates.
3. Sign certificates pertaining to public health.
4. Report to the proper health officer in the manner required of licensed physicians.

All certificates signed by a chiropractor licensed to practice in this state shall be of the same force and effect as ~~if~~ those signed by other licensed physicians.

SECTION 16. AMENDMENT. Section 43-06-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-19. Penalty. Any person who violates any of the provisions of this chapter, and any person who, without complying with the provisions of this chapter:

1. Practices or attempts to practice chiropractic;
2. Advertises as a chiropractor; or
3. Uses the terms or letters, doctor of chiropractic, chiropractor, D. C., chiropractic physician, or any other title that will induce the belief that ~~he~~ the person is engaged in the practice of chiropractic,

is guilty of a class B misdemeanor.

SECTION 17. REPEAL. Section 43-06-14 of the North Dakota Century Code is hereby repealed.

Approved April 7, 1989  
Filed April 7, 1989

## CHAPTER 507

SENATE BILL NO. 2205  
(Committee on Industry, Business and Labor)  
(At the request of the Secretary of State)

### CONTRACTORS' BONDS

AN ACT to amend and reenact section 43-07-11 of the North Dakota Century Code, relating to bond requirements of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 43-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-11. Contractor's bond - Requirements. Every contractor as hereinbefore defined shall be required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are acceptable to the registrar and who are residents of the state of North Dakota. Every such bond for a class A contractor shall be written in the amount of two thousand dollars; bonds for class B, C, and D contractors shall be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including the premiums under the ~~Workmen's~~ Workers' Compensation Law, title 65, and contributions due under the Unemployment Compensation Law, chapters 52-01 through 52-07.1, of the state of North Dakota, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section shall be in addition to any bond required by the provisions of section 48-01-05 and shall also be in addition to the obligation imposed by the provisions of section 57-40.2-14 upon a surety company to the state of North Dakota. If any surety or bonding company or one or more sureties decides to terminate the contractor bond for any reason, the company or sureties shall give the bond recipient and secretary of state sixty days' notice before the termination takes effect. Every contractor, as hereinbefore defined, upon making application for renewal of his license shall not be required to furnish a contractor's bond; however, the secretary of state as registrar shall not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

Approved March 14, 1989  
Filed March 15, 1989

\* NOTE: Section 43-07-11 was also amended by section 51 of Senate Bill No. 2056, chapter 69.

## CHAPTER 508

SENATE BILL NO. 2087  
(Committee on State and Federal Government)  
(At the request of the State Engineer)

### PUBLIC CONTRACT BID REQUIREMENTS

AN ACT to amend and reenact sections 43-07-12 and 48-02-04 of the North Dakota Century Code, relating to requirements for bids for public contracts and advertisement for bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-12. Bids to show license issued. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a copy of the license or certificate or renewal thereof issued by the secretary of state enclosed in the required bid bond envelope. No contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided. A contractor must be the holder of a license at least ten days prior to the date set for receiving bids, to be a qualified bidder. ~~The requirements of this section do not apply to bids submitted to the state highway department.~~ A bid submitted without this information properly enclosed in the bid bond envelope shall not be read nor considered and shall be returned to the bidder. This section does not apply to bids submitted:

1. To the state highway department; or
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418].

\* SECTION 2. AMENDMENT. Section 48-02-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-04. Contents of advertisement. The advertisement for bids required by section 48-02-03 shall state:

1. When and where the plans, drawings, and specifications therefor may be seen and examined;
2. The place where, and the day and hour when, the bids will be opened;
3. That the right of the board to reject any and all bids is reserved;
4. Each bid shall be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety

\* NOTE: Section 48-02-04 was also amended by section 2 of Senate Bill No. 2418, chapter 562.

company authorized to do business in this state, conditioned that if the principal's bid be accepted and the contract awarded to him, he, within ten days after notice of award, will execute and effect a contract in accordance with the terms of his bid and a contractor's bond as required by law and the regulations and determinations of the governing board;

5. All bidders, except bidders on municipal, rural, and industrial water supply projects authorized for funding under Public Law No. 99-294 [100 Stat. 418], must be licensed for the highest amount of their bids, as provided by section 43-07-05. For municipal, rural, and industrial water supply projects authorized for funding under Public Law No. 99-294 [100 Stat. 418], the advertisement must state that unless a bidder obtains a contractor's license for the highest amount of the contractor's bid within twenty days after it is determined the bidder is the lowest and best bidder, the bid will be rejected and the contract awarded to the next lowest, best, and licensed bidder; and
6. No bid will be read or considered which does not fully comply with the above provisions as to bond and licenses, and any deficient bid submitted will be resealed and returned to the bidder immediately.

Approved March 17, 1989

Filed March 17, 1989



## CHAPTER 509

SENATE BILL NO. 2367  
(Schoenwald)

### CONTRACTOR INFORMATION SHARING AMONG STATE AGENCIES

AN ACT to amend and reenact sections 43-07-25, 52-01-03, subsection 4 of section 57-38-57, and section 65-04-15 of the North Dakota Century Code, relating to the sharing of information among the offices of the secretary of state, job service North Dakota, tax commissioner, and workers compensation bureau with respect to contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-25. Public awareness program Licensed contractors' list. On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of the workers compensation bureau, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

\* SECTION 2. AMENDMENT. Section 52-01-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative shall be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of his claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and

\* NOTE: Section 52-01-03 was also amended by section 1 of Senate Bill No. 2117, chapter 598.

may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state labor commissioner, and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner, and the state tax commissioner.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

SECTION 3. AMENDMENT. Subsection 4 of section 57-38-57 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The tax commissioner is hereby authorized to furnish to the workers compensation bureau ~~or~~, to the job service North Dakota, or to the secretary of state, upon ~~the~~ their request of ~~either~~ a list or lists of employers showing only the names, addresses, and the tax department file identification numbers of such employers; provided, that any such list ~~shall~~ may be used by the bureau to which it is furnished only for the purpose of administering the duties of ~~such bureau~~ the requesting governmental unit.

SECTION 4. AMENDMENT. Section 65-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-15. Information in employer's reports confidential - Penalty if employee of bureau divulges information. The information contained in an employer's report is for the exclusive use and information of the bureau in the discharge of its official duties and is not open to the public nor usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

The ~~workmens~~ workers compensation bureau may upon request of the state tax commissioner or the secretary of state furnish to them a list or lists of employers showing only the names, addresses, and ~~workmens~~ workers

compensation bureau file identification numbers of such employers; provided, that any such list so furnished shall be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

Approved March 28, 1989  
Filed March 28, 1989

## CHAPTER 510

HOUSE BILL NO. 1375  
(Tollefson, Aas, Frey)

### **ELECTRICIANS' ADVERTISING**

AN ACT to create and enact a new section to chapter 43-09 of the North Dakota Century Code, relating to advertising by electricians; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Advertising prohibited - Exceptions - Penalty.**

1. Except as provided in this section, where an electrical license is required under section 43-09-09 or by local ordinance, no person offering electrical services may advertise as an electrical contractor, master electrician, or class B electrician unless the person employs a licensed journeyman electrician, or the person is a licensed master electrician or class B electrician. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989.
2. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.  
b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
  - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
  - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars, or imprisonment not to exceed thirty days, or both, may be imposed.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 511

HOUSE BILL NO. 1413  
(Frey, Graba, Gorman, Vander Vorst)

### ELECTRICAL AND PLUMBING INSPECTOR LICENSING

AN ACT to create and enact a new section to chapter 43-09 and a new section to chapter 43-18 of the North Dakota Century Code, relating to license requirements for electrical and plumbing inspectors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Electrical inspectors - License required - Exception. A person employed by the state electrical board or a political subdivision to inspect electrical installations must be licensed as a journeyman or master electrician. This section does not apply to an inspector employed by the electrical board or a political subdivision as of the effective date of this Act.

SECTION 2. A new section to chapter 43-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Plumbing inspectors - License required - Exception. A person employed by the state board of plumbing or a political subdivision to inspect plumbing installations must be licensed as a journeyman or master plumber. This section does not apply to an inspector employed by the board of plumbing or a political subdivision as of the effective date of this Act.

Approved April 3, 1989  
Filed April 3, 1989

## CHAPTER 512

HOUSE BILL NO. 1111  
(Committee on Industry, Business and Labor)  
(At the request of the Electrical Board)

### ELECTRICIANS' LICENSING AND EDUCATION

AN ACT to create and enact two new subsections to section 43-09-15 and a new section to chapter 43-09 of the North Dakota Century Code, relating to the licensing and education of electricians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 43-09-15 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Failure to repay or enter into a written contract for repayment, under a payment schedule acceptable to the board, of money disbursed from the fund as provided under section 43-09-14, or failure to make timely payments under a payment contract entered into under the board's policy for administering the undertaking fund.

Failure to furnish certification of completion of continuing education as required under section 2 of this Act.

SECTION 2. A new section to chapter 43-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Continuing education.** After March 31, 1990, each applicant for renewal of an electrician's license pursuant to section 43-09-15 must have successfully completed prior thereto at least four hours, and thereafter eight hours each biennium, of continuing education relating to the standards set forth in section 43-09-21 or as otherwise prescribed by the board. The board may not require more than sixteen hours of continuing education in each biennium. The board shall conduct education sessions for licensees each year at not less than six locations throughout the state. Attendance at such sessions, or attendance at other education sessions certified by the board as approved, fulfills the educational requirements of this section. The board may charge a fee to licensees for attendance at the education sessions at an amount to be determined by the board, but not to exceed ten dollars per person for each session.

Approved March 9, 1989  
Filed March 9, 1989

## CHAPTER 513

SENATE BILL NO. 2474  
(Senators Maxson, Stenehjem)  
(Representatives Aas, Wentz)

## CREMATORIES, EMBALMERS, AND FUNERAL ESTABLISHMENTS

AN ACT to create and enact a new section to chapter 43-10 of the North Dakota Century Code, relating to licensing of crematories; and to amend and reenact sections 43-10-01, 43-10-02, 43-10-03, 43-10-04, 43-10-05, 43-10-06, 43-10-08, 43-10-10, 43-10-11, 43-10-11.1, 43-10-12, 43-10-13, 43-10-14, 43-10-15, 43-10-16, 43-10-17, 43-10-18, 43-10-19, 43-10-20, 43-10-22, and 43-10-23 of the North Dakota Century Code, relating to governing the licensing of embalmers and funeral directors, the practice of embalming, and the licensing of funeral establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-10-01. Definition of board. Whenever the word "board" is used in this chapter, unless the context otherwise ~~clearly~~ requires, it ~~shall mean~~ means the state board of ~~embalmers~~ funeral service.

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

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

SECTION 3. AMENDMENT. Section 43-10-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-03. Officers of board - Compensation of members - Treasurer's bond. The members of the board may elect from their number a president, a secretary, and a treasurer. The treasurer ~~shall~~ must be bonded for the faithful discharge of ~~his~~ the treasurer's duties in the sum of two thousand dollars. The members of the board shall receive their actual traveling

expenses which ~~shall~~ may not exceed the amount specified in section 54-06-09 and other necessary expenses and in addition the secretary shall receive one hundred dollars a year for his services.

SECTION 4. AMENDMENT. Section 43-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 5. AMENDMENT. Section 43-10-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Adopt such ~~regulations~~ rules for the transaction of its business and the management of its affairs as it deems expedient and proper to administer this chapter.
2. Adopt and use a seal.
3. ~~Promulgate regulations~~ Adopt rules requiring ~~that~~ each funeral home, at the time of selection of merchandise and services from ~~such that~~ funeral home, to disclose in writing to the person or persons making the selection:
  - a. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included within such total.
  - b. The price at retail of each item of supplemental service or merchandise requested.
  - c. The amount of cash advances to the extent that the ~~same~~ advances are known or can be ascertained at the time of the selection.
  - d. The terms by which of payment for merchandise and services ~~is to be made.~~
4. Establish license and renewal fees for ~~embalmers~~ funeral service practitioners and funeral establishments within the limits imposed by this chapter.

SECTION 6. AMENDMENT. Section 43-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-06. Duty of board to adopt rules to prevent the spread of contagious diseases. The board shall adopt such rules ~~and regulations~~ as it ~~may deem~~ deems proper for the disinfection of a deceased person and of



bedding, clothing, apartments, or anything likely to be infected in case of death from a contagious or infectious disease. ~~Such The~~ rules ~~shall~~ must be made known disclosed to every person engaged in embalming and the business of an undertaker funeral service in this state.

SECTION 7. AMENDMENT. Section 43-10-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-08. Board to report to governor and department of accounts and purchases office of management and budget. The board shall submit a biennial report as prescribed by section 54-06-04 to the governor and the department of accounts and purchases office of management and budget.

SECTION 8. AMENDMENT. Section 43-10-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-10. License required. No person ~~shall~~ may embalm or prepare for burial, cremation, or shipment any dead human body unless he has a license to do so from the board or is under the direct supervision of a person who holds a license a dead human body or practice embalming or funeral service in this state unless that person is licensed by the board or under the direct supervision of a person licensed by the board.

SECTION 9. AMENDMENT. Section 43-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Is of good moral character.
2. Has such preliminary preparation and education as the rules ~~and regulations~~ of the board require.

SECTION 10. AMENDMENT. Section 43-10-11.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-11.1. Conviction not bar to licensure - Exceptions. Conviction of an offense ~~shall~~ does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as an embalmer a funeral service practitioner or determines pursuant to under section 12.1-33-02.1 that the person, following conviction of any offense, is not sufficiently rehabilitated.

SECTION 11. AMENDMENT. Section 43-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Anatomy.

2. Embalming.
3. Bacteriology.
4. Chemistry.
5. Pathology.
6. Mortuary management.
7. Restorative arts.
8. ~~laws, rules and regulations~~ Rules of the state department of health and consolidated laboratories and the state board of embalmers governing the practice of embalming funeral service.
9. Other subjects that may be required by the board.

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

SECTION 12. AMENDMENT. Section 43-10-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

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

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

SECTION 13. AMENDMENT. Section 43-10-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-14. License —~~Issued without examination by reciprocity.~~ The board may issue a license to practice embalming or preparing dead human bodies for burial or shipment to an applicant who has not taken the examination if:

1. ~~He holds a license to practice embalming issued to him by another state where the requirements for a license are equivalent to those of this state and where like privileges are accorded to holders of licenses issued in this state.~~
2. ~~He pays the fee of not more than one hundred dollars, as established by the board.~~

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

SECTION 14. AMENDMENT. Section 43-10-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 15. AMENDMENT. Section 43-10-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-16. Grounds for revocation of license. The board may revoke or refuse to issue a license to practice embalming funeral service or preparing dead human bodies for burial, cremation, or shipment if the licensee:

1. Is unfit to practice embalming funeral service.
2. Has violated any of the provisions of this chapter or the rules and regulations of the board.

SECTION 16. AMENDMENT. Section 43-10-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-17. Revocation of license - When proceedings commenced - Hearing - Time. Whenever the board has reason to believe that a license issued under the provisions of this chapter should be revoked or whenever a licensed embalmer files written complaint is filed with the board a written complaint, substantiated by an affidavit, charging the holder of an embalmer's a funeral service license with a violation of any of the provisions of this chapter, the board shall notify the licensee of the charges made against him the licensee and shall set the time and place for a hearing on the charges. The time of the hearing shall be may not be less than twelve forty-five days after the service of the notice of hearing.

SECTION 17. AMENDMENT. Section 43-10-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-18. Notice of hearing - Contents. The notice that charges have been filed against a licensed embalmer shall funeral service practitioner must be served upon him that person by registered or certified mail or personal service. If a written complaint is filed with the board, a copy thereof shall of the complaint must be attached to and served with the notice. The notice shall must specifically state:

1. The charges made against the licensee.
2. The time and place of the hearing.

SECTION 18. AMENDMENT. Section 43-10-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-19. Hearing - Revocation. A licensed embalmer funeral service practitioner against whom charges have been made under the provisions of section 43-10-16 may appear before the board at the time and place of the hearing and refute the charges made against him. Any member of the that person. A board member may administer oaths to witnesses. If after considering the facts and circumstances, the board has sufficient reason to believe that the licensee is guilty of the charges made against him the licensee, it may revoke, suspend, or refuse to issue his a license.

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

43-10-20. Penalty. Any A person who shall practice, practicing or hold himself out representing oneself as practicing, embalming funeral service, or who prepares preparing the dead for burial or shipment in violation of the provisions of this chapter, shall be is guilty of a class B misdemeanor.

SECTION 20. AMENDMENT. Section 43-10-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-22. Licensure of funeral establishments. After January 1, 1964, no A person shall may not operate or manage, for himself or others, a funeral establishment without a funeral establishment license issued by the state board of embalmers for each place of business. No A funeral establishment shall may not be located on tax-exempt property. Any A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than fifty dollars, as established by the board. Thereafter each A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of such a license together with a renewal fee of not more than fifty dollars, as established by the board. Such licenses shall be A license is valid until the following January first, unless sooner revoked as hereinafter provided. All applications. An application must show that the funeral establishment sought to be licensed has complied with all rules and regulations promulgated adopted by the board in regard to safety and sanitation and will be under the supervision of a North Dakota licensed embalmer and funeral director. Any An applicant who has met these standards shall must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of his an estate, the said board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which shall in no instance may not exceed two years. The fee for such the temporary license shall be is the same as required for regular licenses. Any person operating a funeral establishment as defined in section 43-10-21, who is engaged in business at a fixed location in North Dakota on the date of approval of sections 43-10-21 through 43-10-24 may apply for and be entitled to a funeral establishment license on the same basis as would a currently licensed embalmer.

SECTION 21. AMENDMENT. Section 43-10-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 22. A new section to chapter 43-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Licensure of crematoriums. After July 1, 1989, a person may not operate a crematorium without a license issued by the board. A person desiring to operate a crematorium shall submit an application for an annual license to the board. The license fee may not exceed one hundred dollars and must be the same as a funeral establishment license.

Approved March 28, 1989  
Filed March 28, 1989

## CHAPTER 514

HOUSE BILL NO. 1425  
(V. Olson)

### **CREMATED REMAINS DISPOSAL**

AN ACT to provide for the disposition of stored cremated remains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Disposition of stored cremated remains. Any cremated remains in the possession of a funeral home in this state that have not been claimed within twelve months after the time of cremation may be disposed of in accordance with this Act. At least thirty days prior to such disposition, any funeral home wishing to dispose of such remains shall send a written notice to the last known address of the responsible person who directed and provided for the method of final disposition of the human remains to the effect that such remains will be disposed of unless claimed by the person within thirty days from the date of mailing such notice. The notice must be sent by registered mail, return receipt requested.

SECTION 2. State board of embalmers to establish means of disposition. The state board of embalmers shall provide by rule for the appropriate means of disposition for cremated remains held by a funeral home that have not been claimed as provided in section 1 of this Act.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 515

HOUSE BILL NO. 1379  
(Kneil)

### ESTHETICIAN AND MANICURIST LICENSING

AN ACT to create and enact a new section to chapter 43-11 of the North Dakota Century Code, relating to the licensing of estheticians and manicurists; and to amend and reenact section 43-11-01 of the North Dakota Century Code, relating to definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

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

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

SECTION 2. A new section to chapter 43-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Esthetician and manicurist licenses - Qualifications - Fees. The board may issue annual licenses for estheticians and manicurists. The board shall determine the qualifications for licensure and annual license fees for estheticians and manicurists.

Approved April 10, 1989  
Filed April 11, 1989



## CHAPTER 516

HOUSE BILL NO. 1288  
(Rydell, Jensen, R. Berg, Scherber, Ulmer)

### COSMETICS APPLICATION DEMONSTRATIONS

AN ACT to amend and reenact section 43-11-02 of the North Dakota Century Code, relating to exemptions from provisions governing cosmetologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic.
4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation; or by a licensed cosmetologist engaged in manicuring the nails of any person in a licensed barbershop.
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" ~~shall mean~~ means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.
6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. The board may adopt rules to ensure sanitary conditions for services provided under this exemption.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 517

SENATE BILL NO. 2394  
(Senators Nalewaja, Dotzenrod)  
(Representatives Rydell, Smette, Gilmore)

**BOARD OF COSMETOLOGY MEMBER REMOVAL**

AN ACT to amend and reenact section 43-11-03 of the North Dakota Century Code, relating to the state board of cosmetology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-03. State board of cosmetology - Appointment - Term - Removal. The state board of cosmetology consists of three members appointed by the governor for three years each, with their terms of office so arranged that one term expires on June thirtieth of each year. Each member of the board shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor may remove from office a member for misconduct, malfeasance, neglect of duty in office, crime in office, gross incompetency, or habitual drunkenness. A vacancy on the board ~~shall~~ must be filled by appointment by the governor for the unexpired term.

Approved April 13, 1989  
Filed April 13, 1989

## CHAPTER 518

HOUSE BILL NO. 1295  
(Representatives Gilmore, Kolbo, Haugland)  
(Senators O'Connell, Richard, Lips)

### BRUSH ROLLERS

AN ACT to create and enact a new section to chapter 43-11 of the North Dakota Century Code, relating to the use of brush rollers by licensed cosmetologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Use of brush rollers authorized. A person licensed under this chapter may use brush rollers in the performance of cosmetology and hairdressing or hairsetting services if the rollers are cleaned and sanitized after each use in conformity with rules adopted by the board.

Approved April 7, 1989  
Filed April 7, 1989

## CHAPTER 519

HOUSE BILL NO. 1169  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Nursing)

### NURSING BOARD AND LICENSING

AN ACT to amend and reenact section 43-12.1-02, 43-12.1-05, 43-12.1-07, 43-12.1-08, 43-12.1-10, 43-12.1-11, 43-12.1-13, and 43-12.1-14 of the North Dakota Century Code, relating to the definitions of licensee, the practice of nursing as a licensed practical nurse, the practice of nursing as a registered nurse, the terms of office of board of nursing members, the compensation of board members, the powers and duties of the board, requirements for licensure by examination, a license and when issued, and grounds for discipline; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of nursing.
2. "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in this state as a licensed practical nurse.
3. "Licensee" means one who has met all the legal requirements for licensure and has been issued a license any person who has ever held a license, a temporary license, or a temporary permit to practice, or currently holds a license, a temporary license, or a temporary permit to practice as a registered nurse or a licensed practical nurse in this state.
4. The "practice of nursing as a licensed practical nurse" is defined as means the performance of those services, requiring the basic knowledge of biological science and technical skills, commonly performed by a licensed practical nurse under the direction of a registered nurse, licensed physician, or dentist for the purpose of:
  - a. The maintenance of health and prevention of illness.
  - b. The observation and nursing care of persons experiencing changes in their health processes.

- c. Administering prescribed medications and treatments.
  - d. Teaching and evaluating health practices of patients.
  - e. Providing specialized nursing care when such service is authorized by the board through its rules and regulations and delegated by a registered nurse, physician, or dentist, to a licensed practical nurse who has had additional preparation or experience.
5. The "practice of nursing as a registered nurse" is defined as means the performance of acts requiring the specialized knowledge, judgment, and skill based on principles of the biological, physical, behavioral, and social sciences in:
- a. The maintenance of health and prevention of illness.
  - b. Diagnosing human responses to actual or potential health problems.
  - c. Providing supportive and restorative care, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
  - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
  - e. Collaboration in the implementation of the total health care regimen and execution of a medical regimen as prescribed or authorized by a licensed physician or dentist and the
  - f. The performance of such additional acts which are recognized by the nursing profession, in connection with the medical profession, as proper to be performed by registered nurses who have had additional specialized preparation and are authorized by the board through its rules and regulations to perform such acts.
6. "Registered nurse" means one who has met all legal requirements for licensure and holds a current license to practice in this state as a registered nurse.

SECTION 2. AMENDMENT. Section 43-12.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-05. Board of nursing - Composition - Term of office. There shall be a state board of nursing whose members shall be appointed by the governor which shall consist of five registered nurses, three licensed practical nurses, and one public member. Each board member shall be appointed for a term of ~~three~~ four years. No appointee shall be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. The term of the public member must coincide with that of the governor. Terms of licensed nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year. Two of the licensed

nurse board member terms expiring June 30, 1989, must be filled by appointment or reappointment for terms of three years to provide for even distribution of terms of licensed nurse board members.

SECTION 3. AMENDMENT. Section 43-12.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-07. Compensation of board members. In addition to the expenses incurred while engaged in the performance of the duties of his office, each board member shall receive a per diem fee ~~set by the board~~ not to exceed ~~fifty dollars~~ the compensation allowed members of the legislative assembly for each day of service under section 54-03-20.

SECTION 4. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-08. Powers and duties of the board. The board shall:

1. Maintain an office to conduct business.
2. Employ an executive director and such other professional and secretarial staff as may be required.
3. Establish fees and receive all moneys collected under this chapter.
4. Authorize all expenditures necessary for conducting the business of the board. Any balance of such fees after payment of expenditures is to be used in administering the provisions of this chapter.
5. Report all receipts and expenditures of said funds at the close of each fiscal year to the governor.
6. Establish standards for all nursing education programs or acknowledge programs accredited by national nursing accrediting agencies.
7. Conduct surveys as necessary of nursing education programs required to meet board standards.
8. Approve such nursing education programs which meet board standards.
9. Conduct a licensing examination at least once a year for entry into practice as a registered nurse or licensed practical nurse.
10. License candidates who qualify by examination or endorsement as registered nurses or licensed practical nurses.
11. Maintain a permanent register of the names of all persons to whom licenses to practice as a registered nurse or a licensed practical nurse are issued. Such register shall be open to public inspection.
12. Renew licenses periodically.
13. ~~Promulgate~~ Adopt rules and regulations pursuant to under chapter 28-32 for renewal of licenses after an absence of five years from the active practice of nursing.

14. Discipline licensees as necessary.
15. Establish standards for quality of practice for registered nurses and licensed practical nurses after consultation with the North Dakota state nurses association, the North Dakota licensed practical nurses association, and other professional nursing groups.
16. Establish standards for quality of practice for registered nurses and licensed practical nurses functioning in specialized roles after consultation with the North Dakota state nurses association, the North Dakota licensed practical nurses association, and other recognized nursing specialty groups.
17. Execute any legitimate project pertaining to nursing education or practice.
18. ~~Promulgate and adopt~~ Adopt such rules and regulations pursuant to under chapter 28-32 as are necessary to carry out the provisions of this chapter. The board shall involve active participation of all appropriate state education agencies and representatives of public and proprietary institutions which are involved in and responsible for funding or operation of such programs, in the establishment of such standards and approval of programs.
19. Issue temporary licenses to persons who do not meet the educational qualifications in section 43-12.1-12 but meet all other requirements. A temporary license may be issued only once and may be renewed for a period not to exceed two consecutive years for a temporary practical nurse license or four consecutive years for a temporary registered nurse license. The board by administrative rule may identify the requirements for renewal of the temporary license each year based upon progress towards meeting the educational requirements identified in section 43-12.1-12.
20. Conduct public hearings before adopting any rules and regulations or standards.

SECTION 5. AMENDMENT. Section 43-12.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-10. License by examination. Any person who desires to practice as a registered nurse or licensed practical nurse in this state shall be required to write and pass the licensing examination given by the board. Such persons shall file a certified written application for license by examination at least thirty days before the examination accompanied by the prescribed fee and submit satisfactory proof of having the following qualifications:

- 1- Satisfactory completion of the appropriate nursing education program in another country or the appropriate nursing education program approved by a board of nursing in the United States.
- 2- Recommended to the board by the nursing faculty of the completed nursing education program.

A temporary permit to engage in the practice of nursing in the state of North Dakota may be issued by the North Dakota board of nursing to an applicant from the United States or Canada who gives evidence of intention to engage in the practice of nursing in North Dakota between the dates of graduation and notification of the results of the first licensing examination for which the applicant is eligible within the state of North Dakota. The temporary permit for the graduate shall expire upon notification of the results of the first licensing examination.

The board may issue a license to practice as a registered nurse or a licensed practical nurse to an applicant for license by examination if the applicant:

1. Shows evidence of satisfactory completion of the appropriate nursing education program approved by the board or completion of a nursing education program located in another country or approved by another board of nursing which meets or exceeds the standards for registered or practical nursing programs in North Dakota.
2. Has submitted a completed application and fee for licensure by examination and has written and passed the licensing examination given by the board.
3. Is a resident of North Dakota, or has accepted employment in North Dakota or with a federal agency.

Authorization to practice nursing between the dates of graduation and notification of the results of the first licensing examination for which the candidate is eligible, may be issued by the board to a candidate who meets requirements set by the board.

SECTION 6. AMENDMENT. Section 43-12.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-11. License - When issued. Upon satisfactory completion of the licensing examination for registered nurses or licensed practical nurses, the board shall issue a license to practice. A current license to practice will be issued upon proof that the applicant meets all requirements for licensure and is a resident of North Dakota or upon verification of employment in North Dakota or a federal agency.

SECTION 7. AMENDMENT. Section 43-12.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-13. Renewal of license. The board shall renew nursing licenses periodically and may promulgate adopt rules and regulations pursuant to under chapter 28-32, after consultation with duly organized professional nursing organizations recognized by the state board of nursing and with employers of nurses, to determine eligibility for renewal of license before reissuing such licenses. Upon meeting board requirements for renewal of license and paying the renewal fee as set by the board, a current license will be issued. Any person holding a license to practice nursing as a registered nurse or a licensed practical nurse issued by the board which is valid on July 1, 1977, shall thereafter be deemed to be licensed as a registered nurse or licensed practical nurse under the provisions of this chapter. If a registered nurse or a licensed practical nurse fails to renew



~~his a license by January first of the appointed year, the license may be reinstated if the licensee meets the requirements set by the board. Any nurse who voluntarily placed his name on the roster of inactive nurses between the years 1957 to July 1, 1977, may be relicensed by meeting board requirements for renewal of license.~~

SECTION 8. AMENDMENT. Section 43-12.1-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-14. Grounds for discipline - Penalties. The board shall have the power to discipline licensees as necessary by reprimanding the licensee, placing the licensee on probationary status, denying, suspending, or revoking a license or permit to practice nursing issued in accordance with this chapter, if the person is found:

1. To be guilty of fraud or deceit in procuring or attempting to procure a license or permit to practice nursing.
2. To have had a license to practice nursing suspended or revoked in another jurisdiction which has not been reinstated.
3. To have been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a nurse, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. To be guilty of unprofessional conduct likely to deceive, defraud, or harm the public.
5. To be practicing nursing incompetently by reason of negligent acts.
6. To be mentally or physically unsafe for nursing practice.
7. To be guilty of willfully and repeatedly violating the provisions of this chapter practicing as a registered nurse or a licensed practical nurse unless currently licensed to do so.

Any person may file a written sworn complaint with the executive director of the board, charging a licensee with having committed any of the actions specified as grounds for discipline. ~~The boards shall fix a time and place for a hearing.~~ All written complaints filed with the board will be investigated according to board rules. If the investigation reveals grounds to support the charges made against the licensee, the executive director of the board will initiate the hearing procedure in accordance with chapter 28-32. The board shall fix a time and place for a hearing. If the licensee is found to have committed any of the charges in the complaint, the board may reprimand the licensee, place the licensee on probationary status subject to reasonable terms of probation, deny, suspend, or revoke a license. In addition, if the respondent is found by the board to have committed any of the acts set out in this section for which discipline may be imposed, the board may tax costs and disbursements against the respondent as in civil actions, and may further impose a penalty fee if the respondent is found by the board to have committed any of the acts set out in subsections 1 through 4 of section 43-12.1-15 or subsection 7 of this section. Any fee, costs, and disbursements imposed by the board against the respondent may be

paid within a reasonable time and through reasonable periodic payments as specified in the board's order. Any penalty fee imposed may not exceed five dollars for each day or fraction of a day in which the respondent is found by the board to have committed any of the prohibited acts as set out herein, and may not exceed a total of one thousand dollars. A suspended license may be reinstated at any time by the board. A revoked license may be reissued after one year at the board's discretion. An appeal from the final decision of the board may be taken to the district court of Burleigh County in accordance with the provisions of chapter 28-32. The board shall furnish to the boards of nursing of other states, and to health agencies of this state, a list of the names and addresses of licensees who have been disciplined by the board.

SECTION 9. EFFECTIVE DATE. Sections 5 and 8 of this Act become effective immediately upon its filing with the secretary of state and sections 1, 2, 3, 4, 6, and 7 of this Act become effective July 1, 1989.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 520

HOUSE BILL NO. 1186  
(Committee on Industry, Business and Labor)  
(At the request of the Board of Optometry)

### OPTOMETRIST LICENSING AND DISCIPLINE

AN ACT to create and enact three new sections to chapter 43-13 of the North Dakota Century Code, relating to optometry board disciplinary powers and board immunity and impaired optometrists; and to amend and reenact sections 43-13-02, 43-13-03, 43-13-04, 43-13-06, 43-13-07, 43-13-11, 43-13-12, 43-13-13, 43-13-15, 43-13-16, 43-13-17, 43-13-18, 43-13-19, 43-13-20, 43-13-21, 43-13-22, 43-13-23, 43-13-24, 43-13-25, 43-13-26, 43-13-28, and 43-13-31 of the North Dakota Century Code, relating to licensing of optometrists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-02. Persons exempt from provisions of chapter. The provisions of this chapter shall not apply to the following persons:

1. Persons who sell spectacles, eyeglasses, or other articles of merchandise without attempting to practice optometry.
2. Student practitioners interns who are currently enrolled in an optometry school or college accredited by the council on optometric education of the American optometric association, or who have graduated no more than three months prior, and are under the immediate and direct supervision of a registered licensed optometrist.
3. Physicians and surgeons authorized to practice medicine in this state, except that the provisions of section 43-13-28 shall remain applicable.

SECTION 2. AMENDMENT. Section 43-13-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-03. North Dakota state board of optometry - Members - Appointment - Qualifications - Terms of office - Oath - Vacancies. The North Dakota state board of optometry shall consist of seven members appointed by the governor for a term of five years each, with their terms of office so arranged that at least one term shall expire on June thirtieth of each year. Five of the members of the board shall be resident registered licensed optometrists who have an established optometric practice in this state and who are members in good standing of the North Dakota optometric association engaged in the actual practice of optometry in this state. Each member of the board shall qualify by taking the oath required of civil officers and

filing the same with the secretary of the board. A member of the board shall hold ~~his~~ office until ~~his~~ a successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor for the remainder of the unexpired term.

SECTION 3. AMENDMENT. Section 43-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-04. Officers of board - Election - Term of office - Duty of president. The members of the board shall elect from among their own number a president and a secretary. Such officers shall hold office for the term of one year, and until their successors are elected and qualified. The president of the board shall preside at all meetings of the board and shall sign on behalf of the members all ~~certificates~~ licenses or other instruments issued by the board. Such ~~certificates~~ licenses or instruments shall be attested by the secretary.

SECTION 4. AMENDMENT. Section 43-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-06. Secretary of board - Bond. The secretary of the board shall be bonded for the faithful discharge of ~~his~~ duties in such amount as may be prescribed by the board.

SECTION 5. AMENDMENT. Section 43-13-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-07. Compensation and expenses of board members. A member of the board shall receive as compensation for each day ~~he~~ the member actually is engaged in performing the duties of ~~his~~ office a per diem as established by the board, mileage and travel expenses as are provided for in section 54-06-09, and additional allowance for other necessary expenses incurred in attending said meeting not to exceed five dollars per day. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 6. AMENDMENT. Section 43-13-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-11. Records of board. The record of the proceedings of the board kept by the secretary, at all reasonable times, shall be open to public inspection. Such record also shall contain, under permanent binding, a registry list of all persons ~~registered~~ licensed by the board, together with renewals and revocations of ~~certificates~~ licenses. The record shall constitute the official registry of all persons licensed to practice optometry in this state.

SECTION 7. AMENDMENT. Section 43-13-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-12. Records of board as evidence. A true copy of all records of the board, or any part thereof, shall be admissible in evidence without further proof of authenticity when accompanied by the certificate of the secretary of the board that the same is a true copy of the original record on file in ~~his~~ the office ~~as~~ of the secretary of the board.

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

43-13-13. Duties of board. The board shall have the following duties:

1. To enforce the provisions and carry out the purposes of this chapter.
2. To make and enforce such rules and regulations ~~not inconsistent~~ consistent with law as may be necessary for the proper performance of its duties; the effective enforcement of this chapter; ~~and;~~ the reasonable regulation of the profession of optometry and the practice thereof by persons licensed under this chapter; and to protect the health, welfare, and safety of the citizens of this state.
3. To proceed in the courts of this state by injunction when considered necessary to restrain any violation of this chapter.

SECTION 9. AMENDMENT. Section 43-13-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-15. Unlawful to practice without ~~certificate license~~ - Sale of glasses - Regulations. No person shall practice optometry in this state unless ~~he~~ the person first obtains a certificate of registration license and complies with the requirements of this chapter. Eyeglasses, spectacles, and lenses shall be vended as merchandise only:

1. To dealers.
2. From permanently located and established places of business in this state.

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

SECTION 10. AMENDMENT. Section 43-13-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-16. Examination required - When given. Before any person is granted a certificate of registration license to practice optometry in this state, ~~he~~ the person ~~shall~~ must pass an examination given by the board. The examination may be conducted by ~~two~~ four or more of the professional members of the board at such times and places as are prescribed by it.

SECTION 11. AMENDMENT. Section 43-13-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-17. Application for examination - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for a certificate of registration license to practice optometry in this state shall file with the secretary of the board, at least five days before the date of the examination, a written application for examination.

The application shall be accompanied by the affidavits of two freeholders of this state to the effect that the applicant is of good moral character. The applicant also shall furnish satisfactory proof that ~~he~~ the applicant:

1. Is at least eighteen years of age;
2. Has attended high school for four years or has the equivalent of such an education; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education of the American optometric association.

Before beginning the examination, the applicant shall pay to the secretary of the board ~~the~~ a sum of forty fixed by the board, but not to exceed two hundred dollars.

SECTION 12. AMENDMENT. Section 43-13-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-18. When examination not required. An applicant may secure a certificate of registration license to practice optometry in this state without taking the required examination ~~if~~ upon:

1. ~~He presents~~ Presentation of a certified copy or an original certificate of registration or license issued to him by another state where the requirements for registration license are equivalent to those of this state and where like privileges are accorded to holders of certificates licenses issued in this state; and
2. ~~He pays the fee of twenty-five~~ Payment of a sum fixed by the board, but not to exceed two hundred dollars.

The board may give a practical examination to the applicant if it is deemed necessary.

SECTION 13. AMENDMENT. Section 43-13-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-19. Certificate License - When issued - Fee - Failure to pass examination - Reexamination. Every applicant for a certificate of registration license to practice optometry in this state who successfully passes the examination given by the board shall receive a certificate of registration license and shall be ~~registered~~ licensed upon ~~the~~ payment to the secretary of the board ~~of~~ the sum of twenty-five dollars. If the applicant fails to pass the first examination, within fourteen months thereafter, ~~he~~ the applicant may have another examination upon the payment of ~~the sum of five dollars~~ fifty percent of the current application fee. The examination shall be given at such time and place as may be designated by the board.

SECTION 14. AMENDMENT. Section 43-13-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-20. Term of certificate license - Renewal - Annual license fee - Continuing educational requirements. A certificate of registration license to practice optometry in the state shall be issued for one year only, but may

be renewed by paying to the secretary of the board, during the month of January of each year, the license fee for that year, and as of January 1, 1974, by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend such education programs if an applicant furnishes the board with sufficient proof that ~~he~~ the applicant has been unable to attend such education programs during a year, which proof shall include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend such educational programs. The license fee for each year shall be determined annually by the North Dakota state board of optometry and shall not exceed ~~one~~ two hundred dollars. The board shall adopt reasonable rules which shall state the type of optometric educational programs which are approved. The board shall also designate the number of classroom hours which must be attended, which shall not exceed ~~thirty-six~~ sixty within each three-year period. Any person who does not meet these requirements by February first of the year in which the license fee becomes due and payable shall be in default and may be reinstated by the board upon the payment of an additional sum of twenty-five dollars, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. Nothing contained herein shall require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

SECTION 15. AMENDMENT. Section 43-13-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-21. Certificate License to be displayed. Every person to whom a certificate of registration license to practice optometry in this state is issued shall display the same in a conspicuous place in ~~his~~ the office where the practice of optometry is conducted.

SECTION 16. AMENDMENT. Section 43-13-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Has been convicted of a violation of violated any provisions of this chapter, the rules and regulations of the board, or of committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Is an habitual drunkard;
3. Has prescribed, sold, administered, distributed, or given any drug legally classified as a controlled substance or as an addictive or dangerous drug;

- ~~3.~~ 4. Has been addicted to the excessive use of intoxicating liquor or narcotic drugs a controlled substance for at least six months immediately prior to the filing of the charges;
- ~~4.~~ 5. Is permanently afflicted with any contagious or infectious disease;
- ~~5.~~ 6. Is grossly incompetent to discharge his the holder's duties in connection with the practice of optometry;
- ~~6.~~ 7. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
- ~~7.~~ 8. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than one who holds a valid unrevoked certificate license as an optometrist in this state and who has an actual legal residence within this state.

Any person whose certificate license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that his the disability has been removed.

SECTION 17. AMENDMENT. Section 43-13-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-23. Revocation of certificate license - Notice. Before a certificate of registration license to practice optometry in this state shall be revoked or suspended, the secretary of the board shall give the holder of the certificate license notice by registered or certified mail to appear before it to answer the charges against him. The notice shall specify the time and place of hearing which shall be at least ten days subsequent to the date the notice was mailed. A copy of the charges shall be attached to and served upon the holder of the certificate license as a part of the notice.

SECTION 18. AMENDMENT. Section 43-13-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 19. AMENDMENT. Section 43-13-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-25. Determination of board constitutes revocation of certificate license. The board shall review the evidence at the conclusion of the hearing of charges against the holder of a certificate of registration license to practice optometry in the state, and shall enter upon its records



a determination as to whether the accused is guilty of one or more of the charges ~~made against him~~. If ~~he~~ the accused is found guilty, the determination as recorded shall constitute a revocation or suspension of ~~his~~ certificate the license as determined by the board. If the accused fails to appear at the hearing or if he pleads guilty to one or more of the charges ~~made against him~~, the secretary shall enter that fact upon the records of the board. Such record shall constitute a determination of guilt and shall effect the revocation of the certificate of registration license of the accused.

SECTION 20. AMENDMENT. Section 43-13-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 21. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Disciplinary powers of the board.

1. In addition to any other disciplinary actions available to the board, the board may take one or more of the following actions against an optometrist who violates the provisions of this chapter or the board's rules:
  - a. Letters of concern.
  - b. Letters of censure.
  - c. Reprimands.
  - d. Fines, including costs and attorney's fees.
  - e. Stipulations, limitations, and conditions relating to practice such as additional education and counseling.
  - f. Probation.
  - g. Suspension of the license.
  - h. Revocation of the license.
2. The board may require a licensee to be examined on optometric knowledge and skills, if the board has just cause to believe the licensee may be so deficient in knowledge and skills as to jeopardize the health, welfare, and safety of the citizens of this state.

3. The board may require a physical or mental evaluation as provided in section 43-13-26.2 if it has reason to believe the licensee's physical or mental condition may adversely affect the public welfare.

SECTION 22. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Impaired optometrists. The board may restrict, suspend, or revoke the license of any licensed optometrist whose mental or physical ability to practice optometry with reasonable skill and safety is impaired.

1. For the purpose of this section, "impairment" means the inability of a licensee to practice optometry with reasonable skill and safety by reason of:
  - a. Mental illness; or
  - b. Physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills.
2. The board may, upon probable cause, require a licensee or applicant to submit to a mental or physical examination by appropriate health care providers designated by the board. The results of the examination are admissible in any hearing before the board, despite any claim of privilege under any contrary rule or statute. Every person who receives a license to practice optometry or who files an application for a license to practice optometry is deemed to have given consent to submit to the admissibility of the results in any hearing before the board. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances deemed to be beyond the licensee's control, the board may enter a final disciplinary order upon proper notice, hearing, and proof of such refusal.
3. If the board finds, after examination and hearing, that a licensee is impaired, it may take one or more of the following actions:
  - a. Direct the licensee to submit to care, counseling, or treatment acceptable to the board; and
  - b. Suspend, limit, or restrict the optometrist's license for the duration of the impairment.
4. Any licensee or applicant who is prohibited from practicing optometry under this section shall be afforded an opportunity, at reasonable intervals, to demonstrate to the satisfaction of the board that the licensee or applicant can resume or begin the practice of optometry with reasonable skill and safety. Licensure will not be reinstated without the payment of fifty percent of the current license fee and may be subject to such reasonable restrictions as may be imposed by the board.

SECTION 23. AMENDMENT. Section 43-13-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-28. Prohibitions. It shall be unlawful for any corporation, organization, association, group, or individual who is not ~~himself~~ the holder of a ~~certificate~~ license to practice optometry, to engage in the practice of optometry, directly or indirectly, by employing or hiring upon a salary, commission, or other basis or by associating upon a lease or any other profit sharing arrangement with a licensed optometrist or licensed physician. The provisions of this section shall not apply to cooperative or to nonprofit associations or nonprofit corporations.

SECTION 24. AMENDMENT. Section 43-13-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-31. Discrimination in optometric services prohibited. A person may not discriminate between licensed practitioners of optometry and physicians, or interfere with any individual's right to free choice of ocular practitioner, with respect to the providing of professional services within the scope of section 43-13-01. If a ~~group~~ health, accident or disability policy or insurance contract, or any other type of ~~employee group~~ benefit or safety program specifically provides for the payment of optometric services within the scope of section 43-13-01, the payment must be made regardless of whether the service is performed by a physician or optometrist. ~~This section does not apply to medical service contracts written by nonprofit health service corporations.~~

SECTION 25. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Board immunity and privileged communications.

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

Approved April 13, 1989  
Filed April 13, 1989

## CHAPTER 521

SENATE BILL NO. 2194  
(Committee on Industry, Business and Labor)  
(At the request of the Board of Pharmacy)

### **NORTH DAKOTA PHARMACEUTICAL ASSOCIATION**

AN ACT to create and enact six new sections to chapter 43-15 of the North Dakota Century Code, relating to membership in the North Dakota pharmaceutical association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Six new sections to chapter 43-15 of the North Dakota Century Code are hereby created and enacted to read as follows:

North Dakota pharmaceutical association - How governed. The North Dakota pharmaceutical association shall operate under the articles of incorporation filed on December 14, 1886, bylaws adopted at the annual meetings of the association, and amendments thereof duly adopted under the provisions of the articles of incorporation and bylaws.

Membership of North Dakota pharmaceutical association. The membership of the North Dakota pharmaceutical association consists of every person:

1. Who has secured a current annual certificate of registration to practice pharmacy in this state in accordance with this chapter.
2. Who has paid an annual membership fee directly to the association as determined and permitted by the association and who does not hold a current certificate of registration to practice pharmacy in this state.

Rights of members of pharmaceutical association. The members of the association who have secured a current annual certificate of registration to practice pharmacy in this state are entitled to all of the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all of the meetings of the association. The members of the association who have not secured a current annual certificate of registration to practice pharmacy in this state are entitled to all of the rights and privileges of the association, except that they may not vote at the meetings or serve as an officer or director of the association.

Moneys payable from board of pharmacy to North Dakota pharmaceutical association. The association shall annually receive fifty percent of fees received by the board for renewal certificates of registration as a pharmacist in this state. The association may use the funds for payment of expenses of the association including continuing pharmaceutical education, pharmacist discipline, the impaired pharmacist program, matters related to pharmacist registration standards, professional service standards, and

general operating expenses. The amount provided in this section must be paid quarterly to the association by the board. The association may not receive from the board any portion of fees from out-of-state pharmacists who do not have a renewal certificate of registration to practice pharmacy in this state and may not receive any portion of examination fees, permit fees, or other fees or funds not specified in this section.

Method of expenditure of association's funds - Annual report of receipts and disbursements. Expenditures of funds from the board to the association must be approved by the president and executive secretary-treasurer of the association. The executive secretary-treasurer of the association shall annually file in the office of the board an itemized statement of the receipts from the board and disbursements from the receipts.

No liability upon state created by provisions of chapter. The provisions of this chapter do not create any liability on the part of the state in excess of the payment made out of the board funds as provided in this Act.

Approved March 22, 1989  
Filed March 23, 1989

## CHAPTER 522

SENATE BILL NO. 2203  
(Committee on Industry, Business and Labor)  
(At the request of the Board of Pharmacy)

### PHARMACY OR PHARMACIST SUSPENSION

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to temporary suspension of a pharmacy permit or a certificate of registration of a pharmacist; to repeal section 43-15-28 of the North Dakota Century Code, relating to cancellation of certificate of registration; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

#### Temporary suspension - Appeal.

1. If the board has verified evidence that probable cause or grounds for discipline requires the suspension of a pharmacy permit or certificate of registration of a pharmacist and where harm to the public is so imminent and critical that substantial harm could or would likely result if the permit or certificate is not suspended prior to a hearing, the board may order a temporary suspension ex parte.
2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the permit or certificate of registration for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the pharmacy or pharmacist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The pharmacy or pharmacist may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether probable cause or grounds for discipline reasonably requires the temporary suspension to adequately protect the public interest. The court shall give priority to the appeal for prompt disposition.

SECTION 2. REPEAL. Section 43-15-28 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

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

Approved March 31, 1989  
Filed March 31, 1989

## CHAPTER 523

HOUSE BILL NO. 1585  
(Representatives Aas, Tollefson)  
(Senator Schoenwald)

### WHOLESALE DRUG DISTRIBUTORS

AN ACT to provide for regulation of wholesale drug distributors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Board" means the state board of pharmacy.
2. "Manufacturer" means any person engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.
3. "Pharmacy distributor" means any pharmacy licensed in this state or hospital pharmacy that is engaged in the delivery or distribution of prescription drugs either to any other pharmacy licensed in this state or to any other person or entity, including a wholesale drug distributor, engaged in the delivery or distribution of prescription drugs and involved in the actual, constructive, or attempted transfer of a drug in this state to other than the ultimate consumer, where the financial value of the drugs is equivalent to at least five percent of the total gross sales of the pharmacy distributor.
4. "Prescription drug" means any drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the federal Food, Drug and Cosmetic Act.
5. "Wholesale drug distribution" means sale of prescription drugs to persons other than a consumer or patient. The term does not include:
  - a. Intracompany sale, which is a sale between any division, subsidiary, parent, or affiliated or related company under the common ownership and control of a corporate entity.
  - b. The purchase or other acquisition by a hospital pharmacy or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospital pharmacies or health care entities that are members of such organizations.

- c. The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law.
  - d. The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, among hospital pharmacies or other health care entities that are under common control.
  - e. The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, for emergency medical reasons.
  - f. The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription.
  - g. A transfer of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.
  - h. A manufacturer or a manufacturer's sales representative or agent.
6. "Wholesale drug distributor" means any person engaged in the wholesale drug distribution, including manufacturers; repackers; own-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; sales agents; prescription drug repackagers; physicians; dentists; veterinarians; birth control and other clinics; individuals; hospital pharmacies; nursing home pharmacies or their providers; health maintenance organizations and other health care providers; and retail and hospital pharmacies that conduct wholesale distributions. The term does not include any common carrier or individual hired solely to transport prescription drugs.

SECTION 2. Prohibited drug purchases or receipt - Penalty. No person may knowingly purchase or receive any prescription drug from any source other than a wholesale drug distributor, manufacturer, pharmacy distributor, pharmacy, or other person licensed pursuant to the laws of this state except where otherwise provided. A person violating this section is guilty of a class A misdemeanor. A second violation is a class C felony.

SECTION 3. Wholesale drug distributor advisory committee. The board shall appoint a wholesale drug distributor advisory committee composed of three members. One member must be a representative of a pharmacy and may be a pharmacy distributor, but may not be an employee of the board. One member must be a representative of wholesale drug distributors. One member must be a representative of drug manufacturers. In making appointments, the board shall consider recommendations received from wholesale drug distributors, pharmacy distributors, and drug manufacturers and shall adopt rules that provide for solicitation of such recommendations. The advisory committee shall review and make recommendations to the board on the merit of rules of the board which deal with wholesale drug distributors, pharmacy distributors, and drug manufacturers. The board may not adopt any rule affecting wholesale drug distributors or pharmacy distributors without first submitting the proposed rule to the committee for review and comment.



SECTION 4. Wholesale drug distributor and pharmacy distributor licensing requirements - Penalty.

1. No person may act as a wholesale drug distributor or pharmacy distributor without first obtaining an annual license to do so from the board and paying the annual fee required by the board.
2. The board may grant a temporary license when the wholesale drug distributor or pharmacy distributor first applies for a license to operate within this state. A temporary license is valid until the board finds that the applicant meets the requirements for regular licensure.
3. The licensee shall operate in a manner prescribed by law and according to the rules adopted by the board.
4. The board may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state if operations are conducted at more than one location and there exists joint ownership and control among all the entities.
5. An applicant for a license and a licensee shall satisfy the board that the applicant or licensee has and will continuously maintain:
  - a. Adequate storage conditions and facilities;
  - b. Minimum liability and other insurance as may be required under any applicable federal or state law;
  - c. A viable security system that includes after hours, central alarm, or comparable entry detection capability; restricted premises access; comprehensive employment applicant screening; and safeguards against all forms of employee theft;
  - d. A system of records that describes all wholesale drug distributor and pharmacy distributor activities for at least the most recent two-year period and which is reasonably accessible in any inspection authorized by the board;
  - e. Principals and persons, including officers, directors, primary shareholders, and key management executives, who must at all times demonstrate and maintain their capability of conducting business in conformity with sound financial practices as well as state and federal law;
  - f. Complete, updated information, to be provided the board as a condition for obtaining and retaining a license, about each wholesale drug distributor to be licensed under this Act, including pertinent licensee corporate, if applicable, or other ownership, principal, key personnel, and facilities information;
  - g. Written policies and procedures that assure reasonable wholesale drug distributor and pharmacy distributor preparation for, protection against, and handling of any facility security

or operation problems, including problems caused by natural disaster or government emergency; inventory inaccuracies or product shipping and receiving; outdated product or other unauthorized product control; appropriate disposition of returned goods; and product recalls;

- h. Sufficient inspection procedures for all incoming and outgoing product shipments; and
- i. Operations in compliance with all federal legal requirements applicable to wholesale drug distribution.

All requirements by the board under this subsection must conform to wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. In case of conflict between any wholesale drug distributor licensing requirement imposed by the board under this subsection and any wholesale drug distributor licensing guideline of the food and drug administration, the guideline controls.

6. An agent or employee of any licensed wholesale drug distributor or pharmacy distributor need not seek licensure under this section and may lawfully possess pharmaceutical drugs when acting in the usual course of business or employment.
7. A person who violates this section is guilty of a class C felony.

**SECTION 5. Out-of-state wholesale drug distributor and pharmacy distributor licensing requirements - Penalty.**

1. An out-of-state wholesale drug distributor or pharmacy distributor or a principal or agent of the distributor may not conduct any business in this state unless the distributor has obtained a license to do so from the board and paid the fee required by the board.
2. Application for a license under this section must be made on a form furnished by the board.
3. The issuance of a license under this section does not change or affect tax liability imposed by this state on any out-of-state wholesale drug distributor or pharmacy distributor.
4. The board, by rule, may license out-of-state wholesale drug distributors or pharmacy distributors on the basis of reciprocity to the extent that an out-of-state wholesale drug distributor or pharmacy distributor:
  - a. Possesses a valid license granted by another state pursuant to legal standards comparable to those of this state which must be met for obtaining a license under the laws of this state; and
  - b. Shows that the other state would extend reciprocal treatment under its own laws to a wholesale drug distributor or pharmacy distributor of this state.
5. A person who violates this section is guilty of a class C felony.

SECTION 6. License renewal procedures. The board shall mail an application for license renewal to each licensee before the first day of the month in which the license expires. If application for renewal of the license, along with required fee, is not received by the board before the first day of the following month, the license expires on the last day of that month.

SECTION 7. Adoption of rules. Every rule adopted by the board with respect to implementation of this Act must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. In case of conflict between a rule adopted by the board and a guideline of the food and drug administration, the guideline controls.

SECTION 8. Violations of Act - Effect on licensure. If the board determines that a wholesale drug distributor or wholesale pharmacy distributor has committed an act or is engaging in a course of conduct which constitutes a clear and present danger to the public health and safety in this state, the board may restrict or suspend the wholesale drug distributor's or pharmacy distributor's license. The board has the burden of proving that a wholesale drug distributor or wholesale pharmacy distributor is a clear and present danger to the public health and safety.

SECTION 9. Inspection powers and access to wholesale drug distributor records - Penalty. The board or a designee of the board may conduct inspections during normal business hours upon all open premises purporting or appearing to be used by a wholesale drug distributor or wholesale pharmacy distributor in this state. A distributor who provides adequate documentation of the most recent satisfactory inspection less than three years old by either the United States food and drug administration or a state agency determined to be comparable by the board is exempt from further inspection for a period of time determined by the board. This exemption does not bar the board from initiating an investigation pursuant to a complaint regarding a wholesale drug distributor or pharmacy distributor. A wholesale drug distributor may keep records at a central location apart from the principal office of the wholesale drug distributor or the location at which the drugs were stored and from which they were shipped; provided, that the records are made available for inspection within three business days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drugs recordkeeping. A person who fails to provide a duly authorized person the right of entry as provided in this section is guilty of a class A misdemeanor for the first conviction and a class C felony for each subsequent conviction.

SECTION 10. Judicial enforcement. Upon proper application by the board, a court of competent jurisdiction may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit, or license is required by any applicable state law, including this Act, upon a showing that the acts or practices were or are likely to be performed or offered to be performed without a certificate of registration or authority, permit, or license. An action authorized under this section is in addition to and not in lieu of any other penalty provided by law and may be brought concurrently with other actions to enforce this Act.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 524

SENATE BILL NO. 2191  
(Maxson)

### FOREIGN-TRAINED PHYSICIAN LICENSING

AN ACT to amend and reenact section 43-17-18 of the North Dakota Century Code, relating to qualifications of a foreign-trained applicant for a license to practice medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;
2. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;
3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. The However, the board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program;
4. Successful completion of a medical licensure examination satisfactory to the board;

5. Physical, mental, and professional capability for the practice of medicine in a manner acceptable by the board; and
6. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act which would constitute grounds for disciplinary action under this chapter; the board, in its discretion, may modify this restriction for cause.

Approved March 28, 1989  
Filed March 28, 1989

## CHAPTER 525

SENATE BILL NO. 2189  
(Committee on Judiciary)  
(At the request of the Attorney General)

### MEDICAL COMPETENCY RECORDS

AN ACT to amend and reenact section 43-17.1-08 of the North Dakota Century Code, relating to disclosure of records of the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17.1-08. Communication to commission privileged. Communications to the commission and its agents are privileged, and no member of the commission nor any of its agents shall be compelled to testify with respect thereto in any proceedings except in those proceedings conducted before the board of medical examiners wherein the competency of a physician is at issue. All records of the commission, except its financial records, shall be confidential. Notwithstanding the provisions of this section, if the commission determines that the records of the commission disclose a possible violation of state or federal criminal law, the commission may provide the records to the appropriate law enforcement agency.

Approved April 11, 1989  
Filed April 12, 1989

## CHAPTER 526

SENATE BILL NO. 2097  
(Committee on Industry, Business and Labor)  
(At the request of of the State Plumbing Board)

### PLUMBING BOARD AND CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-18 and a new subsection to section 43-18-18 of the North Dakota Century Code, relating to continuing education requirements for persons licensed by the state plumbing board; and to amend and reenact subsection 4 of section 43-18-01, section 43-18-12, subsection 3 of section 43-18-21, subsections 2 and 4 of section 43-18.2-01, and sections 43-18.2-03 and 43-18.2-09 of the North Dakota Century Code, relating to plumbing, examination notice, grounds for revocation of license, apprenticeship credits, continuing education, and sewer and water contractor's and installer's licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Plumbing" shall mean the act of installing in buildings the pipes, installation, maintenance, extension, alteration, and removal of all piping, plumbing fixtures, plumbing appliances, and other facilitating apparatus for appurtenances in connection with bringing water into, and using the same in buildings, and for removing liquids and water-carried wastes therefrom.

SECTION 2. AMENDMENT. Section 43-18-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18-12. Examination - When held - Notice. ~~The board shall hold two public meetings a year at the state capitol for the purpose of examining persons who may desire to take the examination to become registered and licensed plumbers as provided by this chapter. Each examination~~ Examinations shall be held at the time and place prescribed by the board. Notice of such meeting examinations shall be given by mail to all persons who have made application to take the examination and also by publication in such newspaper or newspapers as may be designated by the board. The board may call a special meeting and special examination at any time.

SECTION 3. A new subsection to section 43-18-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to furnish certification of completion of continuing education as required under section 5 of this Act.

SECTION 4. AMENDMENT. Subsection 3 of section 43-18-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An apprentice shall serve a term of seven thousand six hundred hours. When the applicant furnishes proof of previous practical experience in the trade, or is a graduate of a course in plumbing in an accredited school, the board may grant him hourly credit toward his term of apprenticeship. ~~Graduates of the plumbing course of an accredited school having at least a nine-month (one thousand twenty hours) course in plumbing may receive the following number of hours credit for each hour of the course according to the graduating grade average they received:~~

- ~~a. A average - two hours.~~
- ~~b. B average - one and three-quarters hours.~~
- ~~c. C average - one and one-half hours.~~
- ~~d. D average - one hour.~~

SECTION 5. A new section to chapter 43-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education. After January 1, 1991, each applicant for renewal of a master or journeyman plumber's license under section 43-18-17 must have successfully completed prior thereto at least two credit hours, and thereafter a minimum of two credit hours and not to exceed four credit hours within a two-year period, of continuing education relating to the plumbing trade.

Credit hours for educational sessions must be determined by the board on a continuing basis to evaluate new sessions as they become available for fulfilling the educational requirements of this section. The board may charge a fee sufficient to offset expenses incurred for any educational sessions for which it is directly responsible.

SECTION 6. AMENDMENT. Subsections 2 and 4 of section 43-18.2-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- 2. "Sewer and water contractor" means any person who installs, plans, and manages the installation and repair of building sewer and water service.
- 4. "Sewer and water installer" means any person, other than a sewer and water contractor, who installs and repairs building sewer and water service.

SECTION 7. AMENDMENT. Section 43-18.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18.2-03. Sewer and water installer licenses- Licenses. The board shall issue a special license to any person before that person installs and repairs any sewer and water plumbing installation. This license allows the licensee to do the plumbing necessary for sewer and water installation. A sewer and water installer license is not required of licensed master plumbers and journeyman plumbers. No person, firm, or corporation, except plumbers holding valid licenses under chapter 43-18, may engage in the business of



sewer and water contractor or sewer and water installer unless registered and licensed by the board to do so. This license allows the licensee to do plumbing necessary for sewer and water installation.

SECTION 8. AMENDMENT. Section 43-18.2-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18.2-09. License renewal fees. The license renewal fee for a sewer and water ~~installation~~ contractor after the first year of licensure ~~is~~ may not exceed one hundred dollars per year, and the license renewal fee for a sewer and water installer after the first year of licensure ~~is~~ may not exceed twenty-five dollars per year. The license renewal fee for a sewer and water installer apprentice after the first two years of licensure is twenty-five dollars.

Approved April 12, 1989  
Filed April 13, 1989

## CHAPTER 527

HOUSE BILL NO. 1372  
(Representatives Frey, Tollefson, Skjerven)  
(Senator Lips)

### PLUMBERS' ADVERTISING

AN ACT to create and enact a new section to chapter 43-18 of the North Dakota Century Code, relating to advertising by plumbers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

#### Advertising prohibited - Exceptions - Penalty.

1. Except as provided in this section, where a plumbing license is required under section 43-18-11 or by local ordinance, no person offering plumbing contracting services may advertise as a plumbing contractor, master plumber, or journeyman plumber unless the person employs a licensed journeyman plumber, or the person is a licensed master plumber. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989.
2. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.  
b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
  - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
  - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars or imprisonment not to exceed thirty days, or both, may be imposed.

Approved April 10, 1989  
Filed April 11, 1989

## CHAPTER 528

HOUSE BILL NO. 1187  
(Committee on Industry, Business and Labor)  
(At the request of the Real Estate Commission)

### REAL ESTATE COMMISSION AUTHORITY

AN ACT to amend and reenact subsection 3 of section 43-23-11.1 and section 43-23-13 of the North Dakota Century Code, relating to investigations, grounds for refusal, suspension, or revocation of real estate licenses, hearings and appeals, and licensing fees of the real estate commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-23-11.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. No license may be revoked or suspended, no monetary fine imposed, nor any letter or reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, or reprimand. The provisions of chapter 28-32, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals, shall apply to and govern all proceedings for suspension, revocation, fine, or reprimand of licenses or licensees, except where inconsistent with this chapter or rules of the commission.

SECTION 2. AMENDMENT. Section 43-23-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-13. Fees. Fees for real estate brokers, mortgage brokers, and real estate salesmen are as follows:

1. A fee of ~~forty~~ fifty dollars shall accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of ~~forty~~ fifty dollars.
3. For an individual's real estate salesman's license and for each annual renewal of the license, a fee of ~~thirty~~ forty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.

5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesman's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee of twenty dollars.
9. For each change of name, a fee of ten dollars.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 529

HOUSE BILL NO. 1411  
(Soukup, Halmrast)

**MESSAGE THERAPY REGULATION**

AN ACT to amend and reenact sections 43-25-02, 43-25-05, 43-25-07, 43-25-08, 43-25-09, 43-25-13, and 43-25-14 of the North Dakota Century Code, relating to regulation of the practice of massage therapy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage establishment" means any place of business ~~wherein all or any~~ where one or more of the ~~named~~ subjects and methods of treatments, ~~as~~ defined in this section, are administered or used.
3. "Massage therapist" means a person who practices or administers ~~all or any~~ of the following ~~named~~ subjects, and who has ~~made a study of studied~~ the underlying principles of anatomy and physiology ~~as are~~ generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands ~~and includes such modalities as~~ acupressure, reflexology, and polarity. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists ~~shall may~~ not diagnose or treat classified diseases, ~~nor or~~ prescribe or administer vitamins.

SECTION 2. AMENDMENT. Section 43-25-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-05. Board of massage - Terms. ~~For the purpose of carrying out the provisions of this chapter, the~~ The governor shall appoint a board to be known as the North Dakota board of massage, to consist of three massage therapists who are members of the North Dakota massage therapy association. The members ~~shall must~~ be appointed for three years, staggered so that the term of one member expires each year, and ~~they~~ each member shall hold office until ~~their successors are~~ that member's successor is appointed and qualified.

SECTION 3. AMENDMENT. Section 43-25-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-07. Requisites for application and examination - Subjects - Minimum passing grade - Fees Fee for reexamination. Any person who ~~shall furnish to the board satisfactory proof that he or she~~ is eighteen years of age or more, a high school graduate ~~and~~, a bona fide resident of the state of North Dakota for at least one month immediately preceding ~~his or her~~ the application to take the examination, and of good moral character and temperate habits, ~~and shall present~~ is entitled to apply to the secretary-treasurer of the board. The person is entitled to be issued a certificate of registration as a massage therapist if the person:

1. Presents a diploma or credentials issued by a recognized, approved school of massage or like institution of not less than one thousand hours of study and who passes approved by the American massage therapy association or shows that the applicant is an active member of the American massage therapy association.
2. Passes a reasonable demonstrative, oral, and written examination, conducted by and under the supervision and direction of the board in the art of body massage by hand, or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths, and shall pay.
3. Pays the fees hereinafter specified required, which fees shall must accompany the application to the secretary-treasurer of the board, shall be entitled to be registered and to be issued a certificate of registration as a massage therapist.

Minimum requirements for certificate of registration shall be An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and ~~not~~ no score of less than fifty percent in any one subject.

Any applicant failing to pass the requirements ~~shall be~~ is entitled ~~within six months~~ to a reexamination ~~within six months~~ upon payment of an additional fee of ~~ten~~ fifty dollars or a lesser amount established by the board, but two ~~such~~ reexaminations ~~shall~~ exhaust the privilege under the original application.

Conviction of an offense ~~shall~~ does not disqualify a person from registration under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a massage therapist, or that, ~~following conviction of any offense,~~ the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-25-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-08. Fees Fee for certificate of registration. The fee to be paid by an applicant to determine ~~his or her~~ fitness to receive a certificate of registration to practice as a registered massage therapist shall be thirty five is one hundred fifty dollars or a lesser amount established by the board.

The fee to be paid by a massage therapist for the renewal of a certificate shall be ten dollars for each renewal and a certificate shall be renewed annually. Attendance at postgraduate work at least three days a year, as prescribed by the board, is a further requirement for renewal of a certificate.

SECTION 5. AMENDMENT. Section 43-25-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-09. Certificate of registration - Recording - Displaying conspicuously - Renewal - Renewal fee. Each certificate of registration shall must be conspicuously displayed at the place of practice and must be recorded in the office of the clerk of the district court of each in any county wherein where the registered massage therapist practices, and within thirty days after issuance of such certificates. Annually, on. On or before the first day of January first of each year, each and every registered massage therapist shall pay to the secretary-treasurer of the board the a renewal fee as herein provided of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least three days eighteen continuing education units a year, as prescribed by the board, is a further requirement for renewal of the certificate. In the estimation of If the board, if they should so decide, and upon due proof, after a physical examination of any operator whom they suspect or know to be reasonably believes a massage therapist is in such physical well-being condition as to jeopardize the health of those who seek relief from him or her the massage therapist, the board shall then may require the applicant to have a physical examination by a competent medical examiner, and if found to have. If the applicant has had or has any communicable disease sufficient to disqualify said the applicant of a state certificate to practice massage in the state, the granting of the certificate board shall be denied deny a certificate until the applicant furnishes due proof of being physically and mentally competent and sound. The A holder of an expired certificate of registration may, within one year from the date of its expiration thereof, have the certificate renewed upon payment of the required renewal fee, and production of a new certificate of physical examination. All certificate holders shall be designated as certified massage therapists and shall may not use any title or abbreviation thereof without the designation "massage therapist".

SECTION 6. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book in which shall be entered of the names of all persons to whom certificates have been granted under this chapter, the certificate number of each, and the date of granting such each certificate and renewal thereof, and other matters of record, and the book so provided and kept shall be deemed and considered a book of records, and a transcript of any record therein or a certificate that there is not entered therein, the name and certificate number of or date of granting such certificate to a person charged with a violation of any of the provisions of this chapter. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer, and the seal of the board, shall be admitted as evidence in any of the courts of the state of North Dakota. The original books, records, and papers of the board shall must be kept at the office of the secretary-treasurer of said board. The secretary-treasurer shall furnish to any persons making

application therefor person a copy of any such record, certified by him as the secretary-treasurer, upon payment of a fee of ten dollars plus twenty-five cents per one hundred words so page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer shall prepare and submit to the governor and to the North Dakota massage therapy association a biennial report detailing income and expenses and a list of massage therapists certified.

SECTION 7. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-14. Compensation of board members - Clerks. The board members shall receive ~~ten~~ fifty dollars per day and traveling expenses while actually engaged in their official duties. The secretary-treasurer shall be paid three dollars per member per year. The board ~~shall have authority to~~ ~~may~~ hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid said employees.

Approved March 29, 1989  
Filed March 30, 1989



## CHAPTER 530

SENATE BILL NO. 2099  
(Committee on Industry, Business and Labor)  
(At the request of the Attorney General)

### **MASSAGE THERAPIST DISCIPLINARY ACTIONS**

AN ACT to amend and reenact section 43-25-12 of the North Dakota Century Code, relating to powers of the board of massage therapists to revoke, suspend, or annul certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-12. Power of board to revoke, suspend, or annul certificates. The board may, upon satisfactory proof made that any certificate holder has been guilty of any of the charges preferred against him or her, revoke, suspend, or annul any certificate to do business issued hereunder, upon a two-thirds majority vote of the board, ~~provided however that such accused person may have the proceedings of said board reviewed by certiorari to the district court of the district in which the certificate is recorded. Said writ shall be issued upon the petition of the person whose certificate has been revoked, suspended, or annulled at any time within ninety days after such revocation, suspension, or annulment. An appeal from the final decision of the board may be taken under chapter 28-32.~~

The accused shall have the right to demand a trial de novo before the district court and thereafter the court shall hear and determine the guilt or innocence of the accused according to the evidence and law applicable to the facts in evidence. ~~Unless the court shall render a decision in favor of the accused, and restore him or her to all rights to practice under this chapter, the action of the board shall stand. Appeals from any decisions of the district court may be taken to the supreme court of North Dakota in the same manner and subject to like conditions as appeals in other cases are taken. In the event that any such certificate shall be revoked, suspended, or annulled under the provisions of this chapter, the board shall forthwith transmit to the clerk of the district court in which the accused is registered as a massage therapist, a certificate under its seal certifying that the registration has been revoked, suspended, or annulled, as the case may be, and the clerk shall, upon receipt of the certificate, file it and forthwith mark the registration revoked, suspended, or annulled, as the case may be, and in the event of suspension, shall indicate thereon the period for which it is suspended.~~

Any person who shall practice massage after his or her certificate has been revoked, suspended, or annulled shall be deemed to have practiced massage without a certificate. However, at any time after six months from the date of conviction, the board may in the exercise of its reasonable discretion by a majority vote, issue a new certificate to the person affected, restoring or conferring all rights and privileges of and pertaining to the practice of massage, but the fee shall be the same as upon issuance of the original certificate.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 531

HOUSE BILL NO. 1622  
(Stenhjem, V. Thompson, R. Hausauer)

### PHYSICAL THERAPIST LICENSE FEES

AN ACT to amend and reenact sections 43-26-06 and 43-26-09 of the North Dakota Century Code, relating to payment of application and renewal fees by physical therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-06. Applicants - Qualifications - Examinations. It shall be the duty of the committee to pass upon the qualifications of all applicants for physical therapy and physical therapist assistant examination and registration, provide for and conduct all examinations, determine the applicants who successfully pass the examination, and duly register such persons. To be registered as a physical therapist or a physical therapist assistant, a person must:

1. Be at least eighteen years of age.
2. Be of good moral character.
3. Have been graduated by a school of physical therapy or a program of physical therapist assistant training approved by the committee.

Examinations shall embrace subjects to test an applicant's knowledge of the basic and clinical sciences as they relate to physical therapy, and physical therapy theory and procedures, and such other subjects as the committee may determine to be necessary. When applying to take the registration examination, the applicant shall pay the committee a fee fixed by committee regulation and not exceeding ~~seventy-five~~ two hundred dollars which shall not be returned if the application is denied.

SECTION 2. AMENDMENT. Section 43-26-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-09. Renewals - Continued currency - Fees. In January of each year every physical therapist or physical therapist assistant shall apply to the committee for an extension of his or her registration and pay a fee determined by committee regulation and not exceeding ~~twenty-five one hundred~~ dollars. Registration that is not annually renewed on or before January thirty-first shall lapse on that date. The committee, in its discretion, may reinstate a lapsed registration upon payment of the full renewal fee as provided in this section and may, in its discretion, require a late renewal fee of ~~twenty-five~~ fifty dollars.

The committee may establish rules and regulations to require some evidence of continued currency for registration or reregistration as a physical therapist or a physical therapist assistant.

Approved March 29, 1989  
Filed March 30, 1989

## CHAPTER 532

HOUSE BILL NO. 1362  
(Representatives Scherber, A. Olson, Myrdal)  
(Senators Kinnoin, Tallackson, Mathern)

### PHYSICAL THERAPIST DISCIPLINARY PROCEEDINGS

AN ACT to amend and reenact section 43-26-11 of the North Dakota Century Code, relating to grounds for refusal, suspension, or revocation of certification as a physical therapist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-11. Refusal, suspension, or revocation of certificate. The committee may refuse to register any physical therapist or physical therapist assistant, or may suspend or revoke the registration of any physical therapist or physical therapist assistant, for any of the following grounds:

1. Use of controlled substances, drugs, or liquor to an extent that affects professional competency.
2. ~~Conviction~~ A determination by the committee that a conviction of the holder of an offense determined by the committee to have a direct bearing ~~upon a~~ on the holder's ability to serve the public as a physical therapist or physical therapist assistant, ~~or if the committee determines that,~~ following conviction of any offense, ~~that a~~ the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Procuring, aiding, or abetting an illegal abortion.
4. Obtaining or attempting to obtain registration by fraud or deception.
5. A finding by a court of competent jurisdiction that the registrant is a mentally ill person and has not thereafter been restored to legal capacity.
6. Conduct unbecoming a person registered as a physical therapist or physical therapist assistant, or detrimental to the best interests of the public.
7. ~~For treating~~ Treating or attempting to treat ~~or diagnose~~ ailments or other health conditions of human beings other than ~~by~~ physical therapy and as authorized by this chapter.
8. ~~For applying or offering to apply physical therapy exclusive of initial evaluation or screening other than upon the referral of a~~

licensed physician, or a licensed dentist, or in failing to refer to a licensed health care professional any patient whose medical condition at the time of evaluation is determined by the physical therapist to be beyond the scope of practice of physical therapy as defined in section 43-26-01.

9. Failure of a licensed physical therapist to report to the committee any licensed physical therapist the holder knows to be in violation of section 43-26-11.
10. In the case of a physical therapist assistant, practicing or offering to practice other than under the onsite direction of a licensed physical therapist.

Approved March 29, 1989

Filed March 30, 1989

## CHAPTER 533

HOUSE BILL NO. 1335  
(Representative Rydell)  
(Senator Mathern)

### PRIVATE INVESTIGATIVE AND SECURITY BOARD

AN ACT to amend and reenact sections 43-30-01, 43-30-03, 43-30-04, 43-30-05, 43-30-06, 43-30-08, 43-30-09, 43-30-12, 43-30-13, 43-30-14, and 43-30-15 of the North Dakota Century Code, relating to the functions, powers, and duties of the state private investigative and security board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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. "Private investigative service" means obtaining or furnishing information with reference to any act or individual.
- 2- 3. "Private security service" means furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares, and 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.

SECTION 2. AMENDMENT. Section 43-30-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-03. Private investigative and security board. The governor shall appoint a private investigative and security board. The board ~~shall~~ 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. ~~The board shall make recommendations to the attorney general with respect to the exercise of the powers provided in section 43-30-04.~~ 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.

SECTION 3. AMENDMENT. Section 43-30-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-04. Powers of attorney general the board. The attorney general board shall establish by rule the procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services. The attorney general board shall establish the qualifications required for licensing armed security personnel. All rules adopted by the attorney general board and appeals therefrom, shall must be in accordance with chapter 28-32.

SECTION 4. AMENDMENT. Section 43-30-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-05. License required to provide private investigative or security services - Exclusivity. A person may not provide private investigative or security services without a license issued by the attorney general board. Notwithstanding any other law or ordinance, a person may not be required to obtain a license to provide private investigative or security services in this state other than the license required by this chapter.

SECTION 5. AMENDMENT. Section 43-30-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-06. License applications. Every person who desires to obtain a license shall apply to the attorney general board on applications prepared and furnished by the attorney general board. Each application shall must include the information required by the attorney general board and shall must be accompanied by the required fee.

SECTION 6. AMENDMENT. Section 43-30-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-08. Duplicate licenses. If a loss of a license is shown to the satisfaction of the attorney general board, a duplicate thereof shall must be issued by the attorney general board upon payment of the required fee.

SECTION 7. AMENDMENT. Section 43-30-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-09. Detective agency license. The attorney general board may establish by rule the procedures to be followed by a private investigator to operate a detective agency.

SECTION 8. AMENDMENT. Section 43-30-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-12. Revocation or refusal to renew. The attorney general board may either refuse to renew or may suspend or may revoke a license for any one or any combination of the following causes:

1. Fraud in obtaining a license.
2. Violation of any of the terms and provisions 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 or an officer of any corporation has been adjudged guilty of the commission of an offense determined by the attorney general 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 attorney general 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's bond unless the licenseholder files a new bond with sufficient surety within thirty days after notice from the attorney general licenseholder.

SECTION 9. AMENDMENT. Section 43-30-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 10. AMENDMENT. Section 43-30-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-14. Hearing powers. The attorney general shall have power to board may subpoena and bring before it any person in this state and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in civil cases in courts of this state.

SECTION 11. AMENDMENT. Section 43-30-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-15. Application of chapter 28-32. Chapter 28-32 governs the procedures under this chapter. Any decision made by the attorney general board under section 43-30-12 is governed by chapter 28-32.

Approved March 16, 1989  
Filed March 16, 1989

## CHAPTER 534

SENATE BILL NO. 2219  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Social Work Examiners)

### SOCIAL WORKER LICENSING

AN ACT to create and enact a new section to chapter 43-41 of the North Dakota Century Code, relating to the inactive status of nonresident social workers; and to amend and reenact section 43-41-05, subsection 6 of section 43-41-09, sections 43-41-10, and 43-41-11 of the North Dakota Century Code, relating to registration with the board of social work examiners, licensure fees for social workers, authority of the board of social work examiners to issue probationary licenses, and disciplinary hearings by the board of social work examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-41 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Inactive license - Surrender. Licensees no longer residing in the state whose practices do not involve residents of the state will be placed on inactive status. Licensees who wish to maintain a license under inactive status shall continue to meet all requirements for renewal as may be established by rule. A licensee under inactive status will be returned to active status upon proof that the licensee is once again a resident of the state or is providing services to residents of this state.

SECTION 2. AMENDMENT. Section 43-41-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-41-05. Private practice of social work. No person may engage in the private practice of social work unless that person:

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

SECTION 3. AMENDMENT. Subsection 6 of section 43-41-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:



6. Collect a fee not to exceed one hundred dollars on the filing of each application for a license as a licensed social worker or a licensed certified social worker, and a fee not to exceed twenty dollars for the renewal of a license Establish fees and receive all moneys collected under this chapter.

SECTION 4. AMENDMENT. Section 43-41-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-41-10. Grounds for disciplinary proceedings. The board may deny, refuse to renew, suspend, ~~or~~ revoke or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or licensed person:

1. Has been convicted of an offense determined by the board to have a direct bearing upon that individual's ability to practice social work and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
2. Is addicted to the habitual use of alcoholic beverages, narcotics, or stimulants to such an extent as to incapacitate that individual from the practice of social work.
3. Has been grossly negligent in the practice of social work.
4. Has violated one or more of the rules and regulations of the board.
5. Has violated the code of social work ethics adopted by the board.

SECTION 5. AMENDMENT. Section 43-41-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. Hearings and disciplinary proceedings are to be conducted by a three member panel appointed and empowered by the board, with a majority vote to determine the recommended decision 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 grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee, by certified mail, 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. 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. Following the initiation of a disciplinary action, as provided in subsection 3, the board may direct the chairman to select a panel of three board members and offer the licensee the opportunity to meet informally with that panel for the purpose of determining whether the disciplinary action, including appropriate sanctions, can be resolved by mutual agreement. Any agreement reached between the panel and the licensee must be ratified by a majority of the board.
6. If an informal agreement cannot be reached, or is not ratified, or the board elects not to offer the licensee the opportunity for informal resolution, the licensee is entitled to a hearing under chapter 28-32. For purposes of the hearing, the licensee is deemed to be the sole party in interest under section 28-32-08 and the provisions of section 28-32-05 apply only to the licensee.
- 2- 7. The aggrieved party may receive a hearing before the full board if the decision of the panel is not acceptable. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-15.

Approved March 31, 1989  
Filed March 31, 1989

## CHAPTER 535

HOUSE BILL NO. 1266  
(Representatives J. DeMers, Schneider, Wentz)  
(Senators Todd, J. Meyer)

### DIETETICS PRACTICE

AN ACT to amend and reenact section 43-44-01, subsection 1 of section 43-44-02, section 43-44-06, and subsection 10 of section 43-44-10 of the North Dakota Century Code, relating to definitions, membership of the board of dietetic practice, licensure, titles, and abbreviations for dietitians and nutritionists, and persons exempt from licensure as dietitians and nutritionists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-44-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-44-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"Association"~~ means the North Dakota dietetic association.
2. "Board" means the board of dietetic practice.
- ~~3.~~ 2. "Dietetics" means the application of principles derived from integrating knowledge of food, nutrition, biochemistry, physiology, management, and behavioral and social science to achieve and maintain the health of people by providing nutrition assessment and nutrition care services.
- ~~4.~~ 3. "Dietitian" includes dietician.
- ~~5.~~ 4. "General nutrition services" means the counseling of individuals or groups in the selection of food to meet normal nutritional needs, and the assessment of nutritional needs of individuals or groups by planning, organizing, coordinating, and evaluating the nutritional components of community health services.
- ~~6.~~ 5. "Licensed registered dietitian" means a person licensed to practice dietetics as provided in this chapter.
- ~~7.~~ 6. "Licensed nutritionist" means a person licensed to provide general nutrition services as provided in this chapter.
- ~~8.~~ 7. "Nutrition assessment" means the screening and evaluation of the nutrition of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine their nutritional needs and recommend appropriate nutritional intake including enteral and parenteral nutrition.

9- 8. "Nutrition care services" includes:

- a. Providing nutrition assessment.
- b. Planning or providing of food appropriate for physical and medical needs.
- c. Providing nutrition counseling to meet both normal and therapeutic needs.
- d. Providing general nutrition services and related nutrition activities.

SECTION 2. AMENDMENT. Subsection 1 of section 43-44-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~A The governor shall appoint a board of dietetic practice is established. The board consists, consisting of five members appointed by the governor, all of whom must be residents of the state at the time of their appointment, and four of whom must be appointed from a list of names submitted by the association. The persons appointed from the list submitted by the association must have been engaged in the teaching or rendering of dietetics or general nutrition services to the public, or in research in dietetics or general nutrition services for three years immediately preceding their appointment. Four Three board members must be licensed registered dietitians or licensed nutritionists, and at least three members one member must be a licensed registered dietitians nutritionist. The members first appointed to the board need not be licensed under this chapter for appointment to their first term on the board, but must possess the qualifications necessary for licensure under this chapter. One member must be appointed to represent consumers of health services.~~

SECTION 3. AMENDMENT. Section 43-44-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-44-06. License required - Title - ~~Abbreviation~~ Abbreviations. ~~No A person may not practice, nor or represent oneself as able to practice, as a licensed registered dietitian, or a licensed nutritionist, using the title "licensed nutritionist", "dietitian", "registered dietitian", "licensed dietitian", or "licensed registered dietitian", nor use or the abbreviations "LN", "RD", "LD", or "LRD" unless so licensed under this chapter. A licensed nutritionist may use the title "licensed nutritionist" and the abbreviation "LN". A licensed registered dietitian may use the title "licensed registered dietitian" and the abbreviation "LRD". A person may not practice, or represent oneself as able to practice, as a licensed nutritionist using the title "licensed nutritionist" or the abbreviation "LN" unless so licensed under this chapter. A licensed nutritionist may use the title "licensed nutritionist" and the abbreviation "LN".~~

SECTION 4. AMENDMENT. Subsection 10 of section 43-44-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the ~~explanation~~ advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet normal nutritional needs, if that person does not represent that that person is a licensed registered dietitian or licensed nutritionist.

Approved April 7, 1989  
Filed April 7, 1989

## CHAPTER 536

SENATE BILL NO. 2284  
(Senator D. Meyer)  
(Representative J. DeMers)

### HEALTH PROFESSIONAL PEER ASSISTANCE

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the authority of health professional licensing boards to establish agreements with peer assistance entities.

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 hereby created and enacted to read as follows:

#### Definitions.

1. "Board" means:
  - a. The board of registry in podiatry;
  - b. The state board of chiropractic examiners;
  - c. The state board of embalmers;
  - d. The North Dakota board of nursing;
  - e. The North Dakota state board of optometry;
  - f. The state board of pharmacy;
  - g. The state board of medical examiners;
  - h. The North Dakota board of massage;
  - i. The state examining committee for physical therapists;
  - j. The state board of dental examiners;
  - k. The state board of veterinary medical examiners;
  - l. The North Dakota state board of psychologist examiners;
  - m. The board for licensing hearing aid dealers and fitters;
  - n. The North Dakota state board of examiners for nursing home administrators;
  - o. The state board of examiners of audiology and speech pathology;

- p. The North Dakota board of athletic trainers;
  - q. The board of occupational therapy practice;
  - r. The North Dakota board of social work examiners;
  - s. The North Dakota respiratory care examining board;
  - t. The board of dietetic practice;
  - u. The board of addiction counseling examiners; and
  - v. Any health care related board granted licensing authority by the legislative assembly after the effective date of this Act.
2. "Peer assistance entity" means an organization, a program, or a committee or a professional association which is designed to address the issues of alcoholism and other drug dependency and impairment affecting practitioners of the health care professions.

Agreements with peer assistance entities.

1. The board may enter into agreements with peer assistance entities to undertake those functions and responsibilities specified in the agreements which assist the board in performing its duties, implementing disciplinary actions or sanctions, and in otherwise addressing potential or confirmed problems of alcohol or drug abuse and impairment regarding board licentiates.
2. To fund the activities of a peer assistance entity as specified and undertaken under an agreement, the board may annually allocate to the entity a fixed portion of each licentiate registration or licensure fee, or any portion of additional funds available to the board from other sources.

Approved March 22, 1989

Filed March 23, 1989

## CHAPTER 537

SENATE BILL NO. 2449  
(Senators Thane, Holmberg, J. Meyer)  
(Representatives Solberg, R. Larson)

### COUNSELOR LICENSING AND REGULATION

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to creation of a board of counselor examiners and regulation of the practice of counselors; 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 hereby created and enacted to read as follows:

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

1. "Board" means the board of counselor examiners.
2. "Counseling" means assisting an individual, group, or family to develop understanding of intrapersonal and interpersonal problems; to define and set goals, make decisions, and plan a course of action reflecting the needs, interests, and abilities of the person or persons; and to use informational and community resources as needed for personal, social, educational, and vocational development and adjustment.
3. "Counselor" means a person who has been granted either a professional counselor or associate counselor license by the board.
4. "Licensed associate counselor" means a person who has been granted an associate license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.
5. "Licensed professional counselor" means a person who is trained in counseling, guidance, or human services and has been granted a professional counselor license by the board.

Board of counselor examiners - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the board of counselor examiners which consists of five members, including two practicing counselors, one counselor educator, and two members of the public.
2. Members of the board are appointed for terms of three years, except of those first appointed, one must be appointed for terms of one



year, two must be appointed for terms of two years, and two must be appointed for terms of three years. Each member holds office until the member's successor is duly appointed. The governor may remove any member for misconduct, incompetency, or neglect of duty after providing the member with a written statement of the charges and an opportunity for a hearing.

3. The board shall annually select a chairman from among its members. The board shall meet at least twice a year. Additional meetings may be held at the discretion of the chairman or upon written request of any three members of the board.
4. Each member shall serve without compensation but is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.

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

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

**Representation to the public.** Only persons licensed under this chapter may use the title "professional counselor" or "associate counselor". The license issued by the board must be prominently displayed at the principal place of business of the counselor.

**Counseling practice - Exceptions.**

1. This chapter does not prevent any person licensed by the state from doing work within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a professional counselor or associate counselor.
2. This chapter does not apply to the activities, services, or use of an official title on the part of a person employed as a counselor by any federal, state, or local political subdivision or by a private or public educational institution, if the person is performing counseling within the scope of employment.

3. This chapter does not prevent students or trainees who are enrolled in programs leading to counseling degrees from interning within the limitations set by the rules adopted by the board under chapter 28-32.
4. This chapter does not prevent a licensed attorney from providing services within the scope of the practice of law.
5. This chapter does not prevent a member of the clergy of any religious denomination from providing services within the scope of ministerial duties.
6. This chapter does not prevent the employment of, or volunteering by, individuals in nonprofit agencies or community organizations if these persons do not hold themselves out to the public as professional counselors or associate counselors.

Licenses - Qualifications - Reciprocity.

1. Except as otherwise provided in this chapter, no person may engage in counseling in this state unless that person is a licensed professional counselor or licensed associate counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
  - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
  - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
  - c. Has two years of supervised experience under a licensed professional counselor, or its equivalent as determined by the board;
  - d. Has provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
  - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.
3. The board shall issue a license as a licensed associate counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:

- a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
  - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
  - c. Has provided a written plan for supervised experience which meets the requirements adopted by the board.
4. The board may waive the formal examination requirements for a professional counselor license when the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar or greater to those set by the board.
  5. A professional counselor shall renew the license every two years. The board shall renew a license upon payment of a fee set by the board and upon demonstration by the licenseholder of completion of continuing education requirements set by the board.
  6. An associate counselor initially licensed under this chapter may be licensed for no more than two years. The associate counselor's license may be extended beyond two years only upon recommendation of the associate counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate counselor's training program.
  7. For a period of two years beginning on the effective date of this Act, the board shall issue upon the application of any person a license as a licensed professional counselor if the applicant:
    - a. Has received a master's degree that is primarily counseling in content from a regionally accredited institution of higher education;
    - b. Has worked for pay in the counseling field, including counselor education during two of the previous five years;
    - c. Shows evidence of supervision or continued professional growth; and
    - d. Successfully completes an examination approved by the board.

**Disciplinary proceedings.** The board may deny, refuse to renew, suspend, or revoke any license issued under this chapter upon finding by a preponderance of the evidence that the applicant or licenseholder:

1. Has been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to practice counseling and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1;

2. Has been grossly negligent in the practice of counseling and has injured a client or other person to whom the individual owed a duty; or
3. Has violated any rule of the board.

**Complaints - Investigations.** A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and require a written response from the counselor. Neither the initial complaint nor the counselor's response is public record. The counselor's response must be made available to the complainant. After review of the complaint and the counselor's response, the board shall determine if there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines that there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall so notify the complaining party and the counselor in writing.

**Confidentiality.** Except as provided in chapter 50-25.1, no person licensed under this chapter may be required to disclose any information acquired in rendering counseling services without the consent of the person who received the counseling services.

**Penalty.** Any person who violates this chapter is guilty of a class B misdemeanor.

Approved April 6, 1989  
Filed April 7, 1989

## CHAPTER 538

SENATE BILL NO. 2371  
(Senators Schoenwald, Tallackson, Thane)  
(Representatives Rydell, Goetz, J. DeMers)

### CLINICAL LABORATORY PERSONNEL LICENSING

AN ACT to provide for the licensure and regulation of clinical laboratory personnel and to establish a North Dakota board of clinical laboratory practice; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of clinical laboratory practice.
2. "Clinical laboratory" means a site where clinical laboratory testing is done.
3. "Clinical laboratory personnel" means all clinical laboratory scientists or medical technologists or specialists, and clinical laboratory technicians or medical laboratory technicians working in a clinical laboratory, but does not include persons employed by a clinical laboratory to perform clerical duties or other duties classified as supportive functions not related to the direct performance of patient tests, such as phlebotomists, does not include clinical laboratory students, and does not include cytologists performing cytology procedures and histologists or histotechnicians performing histology procedures.
4. "Clinical laboratory student" means a person having qualified and enrolled in an approved program of structured clinical education and who is seeking training and experience required to meet minimum qualifications for a license by the board to practice as a clinical laboratory person in this state.
5. "Clinical laboratory testing" means a microbiological, serological, chemical, hematological, radiobioassay, biophysical, or immunological assay which is derived from the human body, to provide information for diagnosis, prevention, or treatment of a disease or assessment of a medical condition.
6. "Consumer" means a person who might use laboratory medicine services or the services of its practitioners, but does not derive such person's livelihood from these services.

7. "National certifying examination" means national examinations given to certify clinical laboratory personnel and recognized by the board.
8. "Screening test" means a test measuring only the approximate value of the analyte being tested and not used for diagnosis.
9. "Specimen" means any material derived from the human body for examination or other procedure for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, impairment, or assessment of the health of humans.
10. "Structured clinical education" means a program accredited by an appropriate accrediting agency to provide a predetermined amount of instruction and experience in clinical laboratory, and approved or modified by the board.

SECTION 2. License required. No person may practice as a clinical laboratory scientist or a clinical laboratory technician unless the person is the holder of a current license issued by the board, or is exempt from licensure.

SECTION 3. Exemptions. The provisions of this chapter do not apply to the following:

1. Physicians duly and currently licensed to practice medicine.
2. Nurses duly and currently licensed to practice nursing and practicing within the scope of the nursing license.
3. Persons performing clinical testing for teaching or research, provided that the results of any examination performed in such laboratories are not used in health maintenance, diagnosis, or treatment of disease.
4. Persons employed by the United States government, or any bureau, division, or agency thereof, and working in a licensed laboratory.
5. Any person in the pursuit of a supervised course of study leading to a degree at an accredited or educational program approved by the board.
6. Phlebotomy personnel performing phlebotomy procedures and bedside screening tests.
7. Persons performing testing for their own personal use and persons performing screening tests for mass screening under appropriate supervision.
8. Agents of the state or federal government performing hematological tests for anemia upon participants of the special supplemental food program for women, infants, and children.

SECTION 4. Powers and duties of the board. In order to enforce and administer this Act, the board shall:

1. Maintain an office to conduct business.

2. Conduct or approve licensing or certification examinations for entry into clinical laboratory practice as authorized under this Act.
3. Issue and renew a license to any person who currently meets the qualifications in the category for which license is sought.
4. Establish fees and receive all moneys collected under this Act.
5. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this Act.
6. Discipline licensees as necessary, which may include reprimand of the licensee, probation, denial, suspension or revocation of license.
7. Adopt rules pursuant to chapter 28-32, necessary for the implementation of this Act, including rules relating to professional licensure and to the establishment of standards of practice for persons holding a license to practice clinical laboratory testing in this state. The rules must specifically address the special needs of rural hospitals and clinics with regard to laboratory personnel.
8. Employ an executive director and such other professional and secretarial staff as may be necessary.
9. Authorize all expenditures necessary for conducting the business of the board. Any balance of fees and other moneys received by the board after payment of expenditures is to be used in administering the provisions of this Act.
10. Establish or approve criteria for the continuing education of clinical laboratory personnel as it may deem reasonably appropriate as a prerequisite to the renewal of any license provided for in this Act, so long as such requirements are uniform as to application, and are reasonably related to the measurement of qualification, performance, or competence desirable and necessary for the protection of the public health.

SECTION 5. Board of clinical laboratory practice - Administration.

1. There is hereby created a North Dakota board of clinical laboratory practice which shall consist of seven persons appointed by the governor, who must be residents of the state for at least two years prior to their appointment and who, except for the consumer members, must be currently engaged in their area of practice.
2. The board must be composed of:
  - a. One physician recommended by the North Dakota pathology organization. The North Dakota pathology organization shall submit to the governor a list of physicians qualified to serve, such list to contain at least three names.

- b. The following laboratory persons, whose names may be included on a list of such persons qualified to serve submitted to the governor by the North Dakota society for medical technology or other interested persons, such list to contain at least three names for each vacancy:
    - (1) One administrative nonphysician clinical laboratory director;
    - (2) One clinical laboratory scientist; and
    - (3) One clinical laboratory technician.
  - c. Two consumer members, each of whom must be a citizen of the United States, a resident of North Dakota for at least two years before the date of appointment, and a current resident of North Dakota.
  - d. The state health officer or such officer's designee, ex officio.
3. The members of the board shall serve for terms of three years, except that members of the first board must be appointed as provided in this chapter within sixty days after the effective date of this chapter for the following terms:
    - a. A nonphysician laboratory director member, and a consumer member each for a term of three years.
    - b. A clinical laboratory technician member and clinical laboratory scientist member for each term of two years.
    - c. A physician laboratory director member and a consumer member each for a term of one year.
    - d. The state officer member or such officer's designee must be appointed and serve ex officio during such term of office in the department of health and consolidated laboratories.
  4. Each member of the board shall qualify by taking the oath required by civil officers and shall hold office until the successor is duly appointed and qualified.
  5. The governor may remove any board member for good cause after giving that member a written statement of the reason for removal and after the member has had an opportunity for hearing.
  6. Whenever any board vacancy shall occur, the appointment authority shall in the same manner as the prior appointment, appoint a successor of like qualifications for the remainder of the unexpired term.
  7. The board must be authorized to appoint subcommittees which must be representative of the various disciplines licensed under this Act to assist, advise, and make recommendations to the board.



8. The board shall meet at least once during the first three months of each calendar year and at least one additional meeting must be held before the end of each calendar year. Other meetings may be convened at the call of the board chairperson or the written request of any three board members.
9. In addition to the expenses incurred while engaged in the performance of their duties, each board member shall receive a per diem fee set by the board, not to exceed the fee established by law for the legislative assembly.

SECTION 6. Fees. The board shall set by rule the applicable licensure fee for those persons subject to this Act, including the initial fee, license fee, late renewal fees, and limited permit fees. These fees must be set in such reasonable amount as to reimburse the board for the cost of its services.

SECTION 7. Duties and qualifications of clinical laboratory personnel - Requirements for licensure. An applicant applying for license as a clinical laboratory scientist or clinical laboratory technician shall file a written application provided by the board, along with the appropriate fee, showing to the satisfaction of the board that the applicant is qualified for the said position.

SECTION 8. Clinical laboratory scientist or medical technologist or clinical laboratory specialist - Licensure qualifications.

1. A clinical laboratory scientist or medical technologist has graduated with a bachelor of science or a bachelor of arts degree in a science-related discipline and has passed a national certifying examination approved by the board. Upon receipt of documentation that all necessary educational and experience qualifications for a clinical laboratory scientist or medical technologist have been met, or upon successful completion of an examination approved by the board, the board shall issue a clinical laboratory scientist or medical technologist license to any person meeting the above qualifications.
2. A clinical laboratory scientist or specialist is educated in chemical, physical, or biological science and performs in a clinical laboratory only functions directly related to such person's particular specialty. Upon successful completion of an examination covering only those fields in which an applicant is eligible to be examined, and documentation of competency by a nationally recognized certifying agency, the board shall issue a clinical laboratory specialist license to any person meeting the following minimum qualifications:
  - a. A baccalaureate or higher degree with a major in one of the chemical, physical, or biological sciences.
  - b. Has passed a national certifying examination in a specialty area.

A license issued must be issued as a clinical laboratory specialist followed by designation of area of specialty.

SECTION 9. Clinical laboratory technician or medical laboratory technician - Licensure qualifications. A clinical laboratory technician or medical laboratory technician has successfully completed the academic requirements of an educational program recognized by the board and has passed a national certifying examination approved by the board.

Upon receipt of documentation that all necessary educational and experience qualifications for clinical laboratory technician have been met, or upon successful completion of an examination approved by the board, the board shall issue a clinical laboratory technician license to any person meeting the above qualifications.

SECTION 10. Student work authorization. A clinical laboratory student may perform tests under the supervision of licensed clinical laboratory personnel without being licensed therefor by the board.

SECTION 11. Provisional permits. The board may, under criteria established by the board, grant a limited permit to a person who has completed the education and experience requirements of this Act. Such permit allows the person to practice medical technology in association with licensed clinical laboratory personnel. The permit is valid for no longer than a period of three years or until the person holding the permit is duly issued a license or the permit is revoked by the board.

SECTION 12. Grandfather provisions. Upon receipt of evidence showing that a person is currently employed in the practice of clinical laboratory medicine on the effective date of this Act or has been so employed during the preceding one year for a minimum period of six months, and that person does not meet the criteria established for licensure by the board, the board shall, upon application, issue a qualifying license to such person to continue to practice in a laboratory under their scope of practice existing on the effective date of this Act. Persons licensed under this section must meet the same continuing education requirements as any other licensees.

SECTION 13. Issuance of license. The board shall issue a license to any person who meets the requirements of this Act upon application therefor and payment of the license fee established by the board.

SECTION 14. Renewal of license. A license issued under this Act is subject to biennial renewal and expires unless renewed in the manner prescribed by the board and upon the payment of a renewal fee. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules.

SECTION 15. Supervision and revocation of license - Refusal to renew.

1. The board may deny, refuse to renew, suspend, or revoke a license or permit, or may impose probationary conditions if the licensee or permittee or applicant for a license or permit has been found to have committed unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes:
  - a. Obtaining or attempting to obtain a license by means of fraud, deceit, misrepresentation, or concealment of facts.

- b. Being convicted of an offense, as defined by subsection 20 of section 12.1-01-04, and which the board determines has a direct bearing upon a person's ability to serve the public as a licensed clinical laboratory personnel or following the conviction of any offense, the board determines that the person is not sufficiently rehabilitated.
  - c. Violating any lawful order or rule rendered or adopted by the board.
  - d. Violating any provision of this Act.
2. A denial, refusal to renew, suspension revocation, or imposition of probationary conditions upon a licensee or permittee may be ordered by the board after a hearing in the manner provided by rules adopted by the board and in conformance with chapter 28-32. An application for reinstatement may be made to the board one year from the date of the revocation of a license. The board may accept an application for reinstatement, and may hold a hearing to consider such reinstatement.

SECTION 16. Penalty. Any person who violates any provisions of this Act is guilty of a class B misdemeanor.

SECTION 17. APPROPRIATION. There is hereby appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,900, or so much thereof as may be necessary, to the board of clinical laboratory practice for the purpose of carrying out the provisions of this Act for the biennium beginning July 1, 1989, and ending June 30, 1991. Such sums appropriated as are accepted by the board must be returned to the general fund by June 30, 1991, from licensure fees collected by the board.

SECTION 18. EFFECTIVE DATE. Sections 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of this Act become effective on July 1, 1990.

Approved April 13, 1989  
Filed April 13, 1989