

## **CHAPTER 56-02-03 UNETHICAL PRACTICES**

### **Section**

56-02-03-01      Cappers and Steerers Prohibited

56-02-03-02      Code of Ethics

#### **56-02-03-01. Cappers and steerers prohibited.**

The use of so-called "cappers" and "steerers" and splitting of fees for the purpose of obtaining patients is unlawful. For a person registered under the North Dakota optometry law to make a house-to-house canvass or otherwise, either in person or through solicitors or agents, for the purpose of selling glasses, eye examinations, or other optometric services, is declared unprofessional and unlawful. It is prima facie evidence that an optometrist is obtaining business by using and employing suppliers as a "capper" or "steerer" in violation of this section and the law where there is any arrangement, agreement, or practice whereby a supplier of ophthalmic materials:

1. Provides office space for a practicing optometrist.
2. Pays rent for the office space occupied by a practicing optometrist.
3. Pays the professional fees of a practicing optometrist.
4. Pays for any advertising for a practicing optometrist.
5. Pays commissions to a practicing optometrist upon ophthalmic materials furnished to the optometrist or the optometrist's patients.
6. Refers prospective purchasers of ophthalmic materials to a specific optometrist.
7. Otherwise directs prospective purchasers of ophthalmic materials to a specific optometrist.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-13

#### **56-02-03-02. Code of ethics.**

Unethical conduct is conduct contrary to the ethics of the optometric profession as hereinafter set forth. The following code of ethics is adopted as a standard by the board of optometry. It shall be the ideal, the resolve, and the duty of all holders of certificates of registration to practice optometry in North Dakota to:

1. Keep the visual welfare of the patient uppermost at all times.
2. Keep inviolate all confidences committed to the optometrist in the optometrist's professional relationship with the patient.
3. Support organized optometry in its efforts to advance and promote the highest ideals of professional service.
4. Refrain from any exaggeration of a patient's condition.
5. Keep informed as to developments in the profession and to contribute the optometrist's share to the general knowledge and advancement of the profession by all means within the optometrist's power.
6. Refrain from all criticism reflecting upon the skill of a colleague.

7. Refuse to be employed by a person other than a licensed optometrist, a physician licensed under North Dakota Century Code chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.
8. Refrain from employing fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry.
  - a. No person licensed to practice as an optometrist may:
    - (1) Seek to obtain patients by advertising or other forms of solicitation in a manner that is false, fraudulent, deceitful, misleading, or deceptive.
    - (2) On the person's own behalf or on behalf of a partner, associate, association, corporation, organization, group, individual, or any other optometrist affiliated with the person, use or participate, directly or indirectly, in a false, fraudulent, deceitful, misleading, or deceptive statement or claim.
  - b. No person licensed to practice as an optometrist may, directly or indirectly, make any false, fraudulent, deceitful, misleading, or deceptive statements to any person or the public which:
    - (1) Create false, fraudulent, misleading, deceptive, or unjustified expectations of favorable results.
    - (2) Make comparisons with other optometrists which are false, fraudulent, deceitful, misleading, or deceptive.
    - (3) Contain representations that would be likely to cause a reasonable person to misunderstand or be deceived.
  - c. Any public statement or advertisement concerning ophthalmic services or materials, including, but not limited to, lenses, frames, spectacles, contact lenses, or parts thereof, must include the following explanation, warnings, or disclaimers.
    - (1) Any advertisement of prescription spectacles or contact lenses is required to contain language to the effect that an eye doctor's prescription is required for the purchase of such prescription spectacles or contact lenses.
    - (2) Any price advertisement of prescription spectacles or contact lenses is required to contain the following information or be subject to the following conditions:
      - (a) A statement of whether or not the cost of an examination by an eye doctor is included in the price.
      - (b) If any advertised goods are to be available to the public at the advertised price, the advertisement must state the time limitation on the offer.
      - (c) The total quantity available under any advertisement shall be the amount reasonably anticipated to meet the anticipated market demand therefor unless "rainchecks" are given and filled within a reasonable time. If limited quantities are available, the advertisement must so state and give the number available whenever reasonably possible.
      - (d) Any statement or advertisement which offers a discount on the price of ophthalmic materials or services (collectively "items") must specify the regular price of the materials or services if the total discounted items included in such statement or advertisement are five or less. For any such materials or services

so advertised, the regular price must be conspicuously posted at the location where such materials and services are available for purchase and made available by telephone or other reasonable inquiry. If the total discounted items exceed five and the regular price is not so specified, then the statement or advertisement must include the statement that the "regular price is available upon request".

- (e) Any statement or advertisement which involves professional services shall be deemed to include the usual and customary services. If such services are not included, then it must be disclosed what services are included in the price quoted and specifically whether the price includes professional examination and prescription and whether additional charges may be made for related or subsequent services required in individual cases.
  - (f) When contact lenses are advertised, a statement must be included giving the brand name, whether the price or discounted price includes an eye examination and all required accessories and, if not, what the examination, fitting, and followup care is, consists of, and what accessories are included in the advertised price.
- d. Any statement or advertisement which purports to provide a "guaranteed cure" of any condition as a result of ophthalmic services or materials is false and misleading. This provision is not to be construed as prohibiting the advertising and giving of refunds to dissatisfied customers.
- e. Any statement or advertisement which makes unsubstantiated claims comparing prices or quality of services or materials, or both, such as "best examination", or "lowest prices" as an inducement shall be presumed to be misleading. All offers of "free" merchandise or service must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived. When making "free" or similar offers, all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent must be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. If an offer is introductory:
  - (1) No "free" offer should be made in connection with the introduction of a new product or service offered for sale at a specified price unless the offerer expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with the "free" offer; and
  - (2) In such offers, no representation may be made that the price is for one item and that the other is "free" unless the offerer expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with a "free" offer.
- f. Any optometrist who practices optometry under, or uses in connection with the practice of optometry as allowed by law and these regulations, any assumed name, corporate name, partnership name, trade name, or any name other than the name under which the optometrist is certified and licensed to practice optometry in North Dakota shall file an affidavit with the secretary of the North Dakota state board of optometry on forms provided by it stating such name and the individual names of optometrists practicing under such name; provided, however, that optometrists may practice under the name of a properly certified and registered professional corporation and that optometrists practicing as partners may practice under the full or last names of the partners. Optometrists who are employed by other licensed resident optometrists shall practice in

their own names, but may practice in an office listed under the name of the individual optometrists or partnership of optometrist or professional corporation by whom they are employed. No optometrists may practice under any name that falsely, fraudulently, deceitfully, misleadingly, or deceptively portrays the services rendered or goods sold under such name.

- g. Copies (photocopies, tape recordings, videotapes, or other original or accurate reproductions) of all advertising disseminated by or on behalf of an optometrist in this state must be kept as a part of the business records of such optometrist for one year from the date of such advertising.
9. A licensee may only practice optometry in the following settings:
- a. As an individual optometrist in a private practice.
  - b. As an employee of an optometrist or physician licensed to practice in the state of North Dakota.
  - c. As an employee of a clinic operated by licensed optometrists or by licensed physicians.
  - d. As an employee of a hospital.
  - e. As a member of a group composed of optometrists or physicians licensed to practice in North Dakota.
  - f. As an optometrist practicing under an independent contract in a setting which is not a hospital or clinic operated by licensed optometrists or licensed physicians, provided the optometrist is responsible for the following:
    - (1) The type, extent, availability, and quality of optometric services.
    - (2) The type of ophthalmic materials available, prescribed, or dispensed.
    - (3) Files and records relating to patients and the optometric practice.
    - (4) Optometric prescriptions.
    - (5) Scheduling and availability of optometric services.
    - (6) Time limitations on patient examinations.
    - (7) Volume of optometric patients.
    - (8) Fee schedules for optometric services and materials, and the establishment thereof, including billing methods.
    - (9) Information disseminated to the public regarding optometric services.

**History:** Amended effective December 1, 1987; July 1, 2008.

**General Authority:** NDCC 43-13-13

**Law Implemented:** NDCC 43-13-22(6)