

OCCUPATIONS AND PROFESSIONS

CHAPTER 372

HOUSE BILL NO. 1150

(Industry, Business and Labor Committee)

(At the request of the State Board of Accountancy)

PUBLIC ACCOUNTANCY PRACTICE

AN ACT to create and enact a new section to chapter 43-02.2 of the North Dakota Century Code, relating to substantial equivalency for obtaining a certificate or license to practice public accountancy; to amend and reenact sections 43-02.2-01, 43-02.2-02, 43-02.2-03, 43-02.2-04, 43-02.2-06, 43-02.2-07, 43-02.2-08, 43-02.2-09, 43-02.2-11, 43-02.2-12, 43-02.2-15, 43-02.2-16, and 43-02.2-17 of the North Dakota Century Code, relating to certified public accountants and the practice of public accountancy; and to repeal section 43-02.2-05 of the North Dakota Century Code, relating to individual permits to practice public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-02.2-01 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-01. Purpose. It is the policy of this state, and the purpose of this chapter, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. Public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information have demonstrated or maintained their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications, including certificate holders not in public practice, not be permitted to hold themselves out as having such special competence or to offer such assurance. Public interest requires that the ~~professional~~ conduct of persons licensed as having special competence in accountancy be regulated in all aspects of ~~the practice of public accountancy~~ their professional work. Public interest requires that a public authority competent to prescribe and assess the qualifications and to regulate the ~~professional~~ conduct of practitioners of public accountancy and certificate holders not in public practice be established and that the use of titles ~~relating to the practice of public accountancy~~ which are likely to mislead the public as to the status or competence of the persons using such titles be prohibited.

SECTION 2. AMENDMENT. Section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Board" means the state board of accountancy.

2. "Certificate" means a certificate as "certified public accountant" issued under section 43-02.2-04 or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Client" means a person or entity that agrees with a licensee to receive any professional service other than an employer-employee relationship.
4. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.
4. ~~5.~~ "Licensee" means the holder of a certificate, license, or permit issued under ~~section 43-02.2-04~~, a permit issued under ~~section 43-02.2-05 or 43-02.2-06~~, or a certificate or permit issued under this chapter or prior law.
5. ~~6.~~ "Permit" means a permit to practice public accountancy issued under ~~section 43-02.2-05 or 43-02.2-06~~ or 43-02.2-07, prior law, or corresponding provisions of the laws of other states.
6. ~~7.~~ "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or firm holding out to the public as a licensee, for a client or potential client, ~~of one or more kinds of services involving the use of accounting or auditing skills including the issuance of reports on financial statements, or of one or more kinds of but not including management advisory, financial advisory, or consulting services, bookkeeping services, or the preparation of tax returns or the furnishing of advice on tax matters unless provided by a firm with a permit issued under section 43-02.2-06 or 43-02.2-07.~~
7. ~~8.~~ "Practice review" means a study, appraisal, or review of one or more aspects of the professional work of a ~~person or~~ firm in the practice of public accountancy, by a person or persons who hold certificates and are in the practice of public accounting and who are not affiliated with the person or firm being reviewed.
9. "Professional" means arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.
8. ~~10.~~ "Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is an accountant, auditor, or is in the business of accounting, or from the language of the report. "Report" includes any form of language that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

9. 11. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.
40. 12. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.
13. "Substantial equivalency" is a determination by the board or its designee that another jurisdiction's education, examination, and experience requirements are comparable to or exceed that of the uniform accountancy act, or that an individual's education, examination and experience qualifications are comparable to or exceed that of the uniform accountancy act.

SECTION 3. AMENDMENT. Section 43-02.2-03 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-03. State board of accountancy.

1. The state board of accountancy consists of five members appointed by the governor. Four members of the board must be residents of this state who hold certified public accountant certificates issued under the laws of this state and one member of the board must be a resident of this state who is a licensed public accountant under the laws of this state. When the number of licensed public accountants in this state drops below twenty-five, the licensed public accountant member requirement ceases to apply, except that the licensed public accountant then serving on the board may complete that term of office and thereafter the board shall consist of five certified public accountants. The terms of office must be arranged so that only one term expires each year on June thirtieth. Successor board member appointments are for terms of five years. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. A vacancy on the board must be filled by appointment by the governor from a list of at least three nominees submitted by the appropriate nominating committee. Any member of the board whose certificate ~~or permit~~ is revoked or suspended automatically ceases to be a member of the board. The governor may remove any member of the board for neglect of duty or other just cause, after a hearing. No person who has served two ~~consecutive~~ complete terms is eligible for reappointment, but appointment to fill an unexpired term may not be considered a complete term for this purpose.
2. At its first meeting after June thirtieth in each year, the board shall organize by electing one of its members as president, one as secretary, and one as treasurer. The offices of secretary and treasurer may be held by one person. A majority of the board constitutes a quorum.
3. A member of the board is entitled to compensation in an amount to be fixed by the board for each day or portion of a day spent in the discharge of duties, mileage as provided under section 54-06-09, and reimbursement for actual and necessary expenses incurred in the discharge of official duties.
4. All expenses incident to examinations under this chapter, expenses of preparing and issuing certificates and ~~licenses~~ permits, travel expenses

and other allowable expenses of the members of the board, and stationery, printing, clerk hiring, and other office expenses must be paid by the board from the fees collected by it, and no expense incurred under this chapter may be a charge against the funds of this state. Funds administered by the board may not revert to the state general fund.

5. The board has the following powers:
 - a. To administer oaths to all applicants or persons appearing before it in respect to investigations, examinations, or the issuance of certified public accountant certificates.
 - b. To conduct investigations and examinations and issue certificates to properly qualified applicants and ~~licenses~~ permits to properly qualified ~~accountants~~ firms.
 - c. To determine the qualifications of all applicants.
 - d. To employ and establish the salary of an executive director and such other personnel as it deems necessary in administration and enforcement of this chapter. The board may appoint committees or persons, including counsel, to advise or assist the board.
 - e. To take all action that is necessary and proper to effectuate the purposes of this chapter, including the power to sue and be sued in its official name as an agency of this state, to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths, to take testimony, to cooperate with appropriate authorities in other states in investigations and enforcement concerning violations of this chapter and comparable laws of other states, and to receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the board may invoke the aid of any court ~~of this state~~ in requiring the attendance and testimony of witnesses and the production of documentary evidence. The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's responsibilities.
 - f. The board may adopt rules governing its administration and enforcement of this chapter and the conduct of licensees, including:
 - (1) Rules governing the board's meetings and the conduct of its business;
 - (2) Rules of procedure governing the conduct of investigations and hearings by the board;
 - (3) Rules specifying the educational and experience qualifications required for the issuance of certificates under this chapter and the continuing ~~professional~~ education required for renewal of certificates and ~~permits~~ licenses;
 - (4) Rules of ~~professional~~ conduct including rules relating to independence, integrity, and objectivity; competence and

- technical standards; responsibilities to the public; and responsibilities to clients;
- (5) Rules specifying actions and circumstances that must be deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;
 - (6) Rules governing the manner and circumstances of use, ~~by holders of certificates who do not also hold permits under this chapter,~~ of the titles "certified public accountant", "CPA", "licensed public accountant", and "LPA";
 - (7) Rules concerning substantial equivalency;
 - (8) Rules regarding practice reviews that may be required to be performed under this chapter; and
 - ~~(8)~~ (9) Other rules the board deems necessary or appropriate for implementing this chapter.

SECTION 4. AMENDMENT. Section 43-02.2-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any ~~resident~~ person of good moral character who meets the requirements of this section.
2. ~~The board may refuse to grant a certificate on the grounds~~ For the purposes of this chapter, good moral character means the lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the grounds of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.
3. The board shall issue a certificate to a holder of a certificate issued by another state, provided that that state extends similar reciprocity to the certificate holders of this state, and upon a showing that:
 - a. The applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this state;
 - b. The applicant:
 - (1) Meets all current requirements ~~except residence~~ in this state for issuance of a certificate, at the time application is made; or

- (2) At the time of the issuance of the applicant's certificate in the other state, met all such requirements ~~except residence~~ then applicable in this state; and
 - c. ~~The applicant meets the requirements of section 43-02.2-05, if applying for a permit.~~
 - d. The applicant has paid the applicable fees.
4. The board shall issue a certificate to a holder of a recognized ~~professional~~ accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:
 - a. Meets the good moral character requirement of subsection 2;
 - b. Meets the substantial equivalent of the education requirements of subsection 5 and the experience requirements of subsection 14 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education ~~or~~ and experience requirements then applicable in this state;
 - c. Has completed examinations generally equivalent to those prescribed under subsection 6;
 - d. Has satisfactorily completed any additional examinations that the board prescribes; and
 - e. Has paid the applicable fees; and
 - f. ~~Meets the requirements of section 43-02.2-05, if applying for a permit.~~
5. The education requirement for a certificate is as follows:
 - a. Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, ~~with~~ and an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.
 - b. After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree or their equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board rule to be appropriate. An individual who on December 31, 1999, meets the requirements of subdivision a may obtain a certificate under subdivision a if the individual passes the examination in accordance with board rules before December 31, 2004.

6. The ~~examinations~~ examination required to be passed as a condition for the granting of a certificate ~~must be in writing and must~~ test the applicant's knowledge of the subjects of accounting and auditing. A grade of seventy-five percent is required in each subject to constitute a passing grade. The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the ~~examinations~~ examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties. The board may permit a candidate to take the examination if the board is satisfied that the candidate will complete the educational requirements of this section within six months after the candidate's application to take the examination.
7. An applicant must pass ~~all sections of~~ the examination provided for in subsection 6, as specified by rule, in order to qualify for a certificate. ~~If at a given sitting of the examination an applicant passes two or more but not all sections, then the applicant must be given credit for those sections passed and need not sit for reexamination in those sections, provided that:~~
 - a. ~~The applicant wrote all sections of the examination at that sitting;~~
 - b. ~~The applicant attained a minimum grade of forty percent on each section not passed at that sitting but this requirement does not apply to an applicant who has passed three sections at a given sitting;~~
 - c. ~~The applicant passes the remaining sections of the examination within the six consecutive examinations given after the one at which the first sections were passed;~~
 - d. ~~At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections not yet passed; and~~
 - e. ~~In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of forty percent on sections written but not passed on such sitting.~~
8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.
9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances ~~in~~ under which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.

10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for ~~each section of the examination or reexamination taken by the applicant.~~
11. A certificate of certified public accountant must be ~~issued and~~ renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.
12. The board may require examination of other related subjects as specified by rule.
13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized ~~professional~~ accounting ~~designations~~ designation, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized ~~professional~~ accounting designation by another state or jurisdiction.
14. After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.
15. The board may require by rule, as a condition for granting and renewal of certificates under this section, that applicants show completion of continuing education meeting requirements of board rule. The continuing education rules may include provisions for exceptions and must include reasonable provision for an applicant who cannot meet the continuing education requirements due to circumstances beyond the applicant's reasonable control.
16. As an alternative to the requirements of subsection 3, the board shall issue a certificate to an individual who holds a certificate from another state, who establishes the individual's principal place of business within this state and has submitted the applicable application and fees, provided that the individual or the other state has attained substantial equivalency.

SECTION 5. AMENDMENT. Section 43-02.2-06 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-06. Permits to practice - Firms.

1. ~~Each firm that engages in the practice of public accounting~~ A firm must hold a firm permit issued by the board, in order to practice public accounting or to use the titles "CPAs", "LPAs", "CPA firm", "LPA firm", or similar titles. The board shall grant or renew permits to practice

public accountancy to firms that make application and demonstrate their qualifications in accordance with this section.

2. Permits must be issued and renewed on an annual basis. Applications for permits must be made in the form the board specifies. The board shall grant or deny any application no later than ninety days after the application is filed in proper form. If the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which expires ninety days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever occurs first.
3. An applicant for initial issuance or renewal of a permit to practice under this section must show that ~~each partner, officer, or shareholder who regularly works in this state, and each employee who holds out as a licensee and who regularly works in this state, holds a valid individual permit to practice issued under section 43-02.2-05 or the corresponding provision of prior law and that each other partner, officer, or shareholder holds a certificate or similar professional accounting designation and is licensed to practice public accountancy in some other state or jurisdiction notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights, belongs to licensees of a state or other recognized jurisdiction and that all certified public accountants or licensed public accountants associated with the firm whose principal place of business is in this state and who perform professional services in this state hold a valid certificate or license issued by this state. The firm and its owners must comply with all board rules regarding ownership.~~
4. An applicant for initial issuance or renewal of a permit to practice under this section is required to register each office of the firm within this state with the board ~~and to show that each office is under the charge of a person holding a valid permit to practice issued under section 43-02.2-05 or the corresponding provision of prior law.~~
5. The board shall charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.
6. Applicants for initial issuance or renewal of permits under this section shall in their applications list all states and jurisdictions in which they have applied for or hold permits to practice public accountancy or similar authorizations, and each holder of or applicant for a permit under this section shall notify the board in writing, within thirty days after its occurrence, of any change in the identities of partners, officers, or shareholders who work regularly within this state, any change in the number or location of offices within this state, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state or ~~jurisdictions~~ jurisdiction.
7. The board may require by rule, on either a uniform or a random basis, as a condition to renewal of permits under this section, that applicants undergo practice reviews conducted no more frequently than once every

three years in such manner and producing such satisfactory result as the board specifies; provided that any such requirement must be adopted reasonably in advance of the time when it is first required to be met and must include reasonable provision for compliance by an applicant's showing that it has undergone a satisfactory review performed for other purposes which was substantially equivalent to practice reviews generally required under this subsection and completion of such review was within the three years immediately preceding the renewal period.

SECTION 6. AMENDMENT. Section 43-02.2-07 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-07. Licensed public accountants and firms of public accountants.

Persons ~~and firms~~ who on the effective date of this ~~Act~~ chapter hold ~~registrations as licensed public accountants~~ accountant licenses issued under prior law of this state are entitled to have ~~permits to practice granted and those licenses renewed under sections 43-02.2-05 and 43-02.2-06~~ provided that they fulfill all requirements for renewal under ~~those provisions~~ this section and subsections 13 and 15 of section 43-02.2-04. ~~If such Firm~~ licensees that hold valid permits to practice ~~under sections 43-02.2-05 and 43-02.2-06,~~ they are entitled to engage in the practice of public accountancy to the same extent and with the same requirements as other holders of such permits and are entitled to use the designations "licensed public accountant" and "LPA", but no other designation, in connection with the practice of public accountancy. Licensed public accountant licenses and firm permits must be renewed annually, with renewal subject to payment of fees and any other requirements prescribed by the board.

SECTION 7. AMENDMENT. Section 43-02.2-08 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-08. Appointment of secretary of state as agent. Application by a person or a firm not a resident of this state for a certificate under section 43-02.2-04 or a permit to practice under section ~~43-02.2-05 or 43-02.2-06~~ constitutes appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to ~~the practice of public accountancy by the applicant~~ services performed within this state by the applicant.

SECTION 8. AMENDMENT. Section 43-02.2-09 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-09. Enforcement against holders of certificates and permits licensees.

1. The board may revoke any certificate, license, or permit issued under ~~section 43-02.2-04, 43-02.2-05, or 43-02.2-06~~ this chapter or corresponding provisions of prior law; suspend any such certificate, license, or permit or refuse to renew any such certificate, license, or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding one thousand dollars; or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:
 - a. Fraud or deceit in obtaining a certificate, license, or permit;

- b. Cancellation, revocation, suspension, or refusal to renew ~~authority to engage in the practice of public accountancy~~ a certificate, license, or permit in any other state or jurisdiction for any cause;
 - c. Failure, on the part of a holder of a certificate, license, or permit, to maintain compliance with the requirements for issuance or renewal of such certificate, license, or permit or to report changes to the board under section 43-02.2-04, ~~43-02.2-05~~, ~~or~~ 43-02.2-06, or 43-02.2-07;
 - d. Revocation or suspension of the right to practice before any state or federal agency;
 - e. Dishonesty, fraud, or gross negligence in the ~~practice of public accountancy~~ performance of services as a licensee or in the filing or failure to file the ~~certificate or permit~~holder's licensee's own income tax returns;
 - f. Violation of any provision of this chapter or rule adopted by the board under this chapter;
 - g. Violation of any rule of ~~professional~~ conduct adopted by the board under section 43-02.2-03;
 - h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
 - i. Performance of any fraudulent act while holding a certificate, license, or permit issued under this chapter or prior law; ~~and~~
 - j. Any conduct reflecting adversely upon the licensee's fitness to ~~engage in the practice of public accountancy~~. perform services while a licensee; and
 - k. Making any false or misleading statement or verification, in support of an application for a certificate, license, or permit filed by another.
2. In lieu of or in addition to any remedy specifically provided in subsection 1, the board may require of a licensee either or both of the following:
 - a. A practice review conducted as the board specifies.
 - b. Satisfactory completion of continuing ~~professional~~ education programs the board specifies.
 3. In any proceeding in which a remedy provided by subsection 1 or 2 is imposed, the board may require the respondent licensee to pay the costs of the proceeding.

SECTION 9. AMENDMENT. Section 43-02.2-11 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-11. Reinstatement.

1. If the board has suspended, refused to renew, or revoked a certificate, license, or a permit ~~or refused to renew a certificate or permit~~, the board may modify the suspension or reissue the certificate, license, or permit upon application in writing by the person or firm affected and for good cause shown and payment of a fee established by the board.
2. The board shall specify by rule the manner in which applications for reinstatement must be made, the times within which they must be made, and the circumstances in which hearings on applications will be held.
3. Before reissuing or terminating the suspension of a certificate, license, or permit under this section, the board may require the applicant to show successful completion of specified continuing ~~professional~~ education and may make the reinstatement ~~of a certificate or permit~~ conditional and subject to specified conditions, including satisfactory completion of a practice review conducted as specified by the board.

SECTION 10. AMENDMENT. Section 43-02.2-12 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-12. Unlawful acts.

1. A person or firm ~~not holding a valid permit issued under section 43-02.2-05 or 43-02.2-06~~ that is not a licensee may not practice or offer to practice public accountancy or issue a report on financial statements of any other person, firm, organization, or governmental unit. ~~This prohibition does~~ Individual licensees may not practice public accountancy unless they do so within a firm that holds a permit issued under this chapter. These prohibitions do not apply to an officer, partner, or employee of any firm or organization affixing ~~a~~ the person's name or signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".
2. ~~The prohibition contained in subsection 4 is applicable to issuance, by a person or firm not holding a valid permit, of a report using any form of language conventionally used by licensees respecting a review of financial statements.~~
3. ~~The prohibition contained in subsection 4 is applicable to issuance by a person or firm not holding a valid permit of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements.~~

4. A person not holding a valid certificate issued under this chapter may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.
5. ~~3.~~ A firm may not practice public accountancy or assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants a certified public accountant firm, unless the firm holds a valid permit issued under section ~~43-02.2-06~~, and all partners, officers, and shareholders of the firm hold certificates this chapter.
6. ~~4.~~ A person may not assume or use the title or designation "licensed public accountant" or the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a licensed public accountant unless the person is registered as provided in section 43-02.2-07.
7. ~~5.~~ A firm may not practice public accountancy, or assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of licensed public accountants a licensed public accountant firm, unless the firm holds a valid permit issued under section ~~43-02.2-06~~, and all partners, officers, and shareholders of the firm are licensed public accountant registrants this chapter.
8. ~~6.~~ A person or firm not holding a valid certificate, license, or permit issued under section ~~43-02.2-05 or 43-02.2-06~~ this chapter may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "public accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "~~EA~~", "LA", "PA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA". A holder of a certificate who does not also hold a permit may use the titles pertaining to the certificate in any manner not prohibited by rules adopted by the board under section ~~43-02.2-03~~.
9. ~~7.~~ A person or firm not holding a valid certificate, license, or permit issued under section ~~43-02.2-05 or 43-02.2-06~~ this chapter may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a certificate, license, or permit or has special competence as an accountant or auditor. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's name or signature to any ~~statement~~ in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds and does not prohibit any act of a public official or employee in the performance of duties.

10. ~~A person holding a certificate may not engage in the practice of public accountancy unless the person also holds a valid permit issued under section 43-02.2-05.~~
11. 8. ~~A person or firm holding a permit under this chapter licensee may not engage in the practice of public accountancy using use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter. Names of one or more former partners or shareholders may be included in the name of a firm or its successor.~~
12. 9. This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country, whose activities in this state are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person or firm holds such entitlement. This subsection does not authorize issuing reports with respect to the financial statements of any other persons, firms, or governmental units in this state. A person or firm acting under the authority of this subsection may not use in this state any title or designation other than the one under which the person or firm practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

SECTION 11. AMENDMENT. Section 43-02.2-15 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-15. Single act evidence of practice. In any action brought under ~~section 43-02.2-09, 43-02.2-10, 43-02.2-12, 43-02.2-13, or 43-02.2-14~~ this chapter, evidence of the commission of a single act prohibited by this chapter is sufficient to justify a penalty ~~which must include revocation, suspension, refusal to renew, reprimand, censure, fine, probation, injunction, restraining order, or conviction or any combination of these penalties,~~ without evidence of a general course of conduct.

SECTION 12. AMENDMENT. Section 43-02.2-16 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-16. Confidential communications. Except by permission of the client engaging a licensee under this chapter, or the heirs, successors, or personal representatives of such client, a licensee or any partner, officer, shareholder, or employee of a licensee may not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee ~~in the practice of public accountancy~~. Such information is deemed confidential but this section may not be construed as prohibiting the disclosure of information required to be disclosed by the standards of the ~~public accounting~~ profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under section 43-02.2-09 or 43-02.2-10, in ethical investigations conducted by private professional organizations, or in the course of practice reviews, or to other persons active in the organization performing services for that client on a need-to-know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

SECTION 13. AMENDMENT. Section 43-02.2-17 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-17. Licensees' working papers - Clients' records.

1. All statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, or employee of a licensee, incident to, or in the course of, rendering services to a client ~~in the practice of public accountancy while a licensee~~, except the reports submitted by the licensee to the client and except for records that are part of the client's records, are the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. A statement, record, schedule, working paper, or memorandum may not be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners or stockholders or new partners or stockholders of the licensee, or any combined or merged firm or successor in interest to the licensee. This section may not be construed as prohibiting any temporary transfer of workpapers or other material necessary in the course of carrying out practice reviews.
2. A licensee shall furnish to a client or former client, upon request and reasonable notice:
 - a. A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and
 - b. Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.
3. This section does not require a licensee to keep any workpaper beyond the period prescribed in any other applicable statute.

SECTION 14. A new section to chapter 43-02.2 of the North Dakota Century Code is created and enacted as follows:

Substantial equivalency.

1. An individual whose principal place of business is not in this state, shall have all the privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit under sections 43-02.2-04 or 43-02.2-05, if the individual holds a valid certificate as a CPA from any state that has attained substantial equivalency, or if the individual's CPA qualifications are deemed to meet substantial equivalency. Individuals intending to enter the state under this provision shall submit the applicable application and fees prior to entry. Any licensee of another state exercising the privilege afforded under this section hereby consents, as a condition of the grant of this privilege:

- a. To the personal and subject matter jurisdiction of the board;
 - b. To comply with this chapter and the board's rules; and
 - c. To the appointment of the state board which issued the person's certificate as the person's agent upon whom process may be served in any action or proceeding by this board against the licensee.
2. A licensee of this state offering or rendering services or using the licensee's CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

SECTION 15. REPEAL. Section 43-02.2-05 of the North Dakota Century Code is repealed.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 373

SENATE BILL NO. 2149

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

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-04, 43-07-09, 43-07-10, 43-07-17, 43-07-18, and 43-07-19 of the North Dakota Century Code, relating to licensing of contractors, revoking a contractor's license, appointing an agent for service of process for a nonresident contractor, and civil penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

SECTION 2. AMENDMENT. Section 43-07-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. AMENDMENT. Section 43-07-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Invalidity of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of ten thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

SECTION 4. AMENDMENT. Section 43-07-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-17. Revocation of license - Relicensing. A licensee whose license has been revoked may not be relicensed ~~during the current calendar year in which the decision to revoke the license was made~~ for a period of up to five years.

SECTION 5. AMENDMENT. Section 43-07-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

²⁶⁷ **SECTION 6. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota shall furnish to the secretary of state of the state of North Dakota a written appointment by which ~~such~~ the applicant appoints the secretary of state of the state of North Dakota as ~~his~~ the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be evidence of ~~said~~ the contractor's consent that any such process against ~~him~~ the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon ~~him~~ the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-22 ~~and~~, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.1 and having a current registered agent and registered address on file in the ~~corporate division~~ of the secretary of state's office need not appoint the secretary of state as agent for service of process under the provisions of this section. Within ten days after service of the summons upon the secretary of state, notice of such service ~~together~~ with the summons and complaint in the action shall be sent to the defendant contractor at ~~his~~ the contractor's last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon ~~him~~ the secretary of state under ~~the provisions~~ of this section. Such record shall show the day and hour of service. Whenever service of process shall have been made as provided in this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as

²⁶⁷ Section 43-07-19 was also amended by section 62 of House Bill No. 1045, chapter 50.

may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against ~~him~~ the defendant contractor.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 374

HOUSE BILL NO. 1088

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

ELECTRICIAN UNDERTAKING FUND

AN ACT to amend and reenact section 43-09-14 of the North Dakota Century Code, relating to the electrician undertaking fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-14 of the North Dakota Century Code is amended and reenacted as follows:

43-09-14. Master electrician and class B electrician - Undertaking - Fund.

Before entering into a contract agreement or undertaking with another for the installation of electrical wiring or installation of electrical parts of other apparatus, a master electrician or a class B electrician shall execute and deposit with the board an undertaking in the sum of ~~three~~ five thousand dollars for a master electrician or ~~two~~ four thousand dollars for a class B electrician conditioned ~~for~~ on the faithful performance of all electrical work undertaken ~~and the~~ by the electrician, on strict compliance with ~~all~~ the provisions of this chapter, and on the requirements of the board. In addition, a deposit must be made with the board in the amount of ~~twenty five~~ fifty dollars by a master electrician and in the amount of ~~fifteen~~ forty dollars by a class B electrician, in lieu of a surety bond. The deposit so made must be accumulated by the board in a special fund to be used for the completion of installations abandoned by electricians referred to in this section, not to exceed the amount of ~~three~~ five thousand dollars for a master electrician and ~~two~~ four thousand dollars for a class B electrician. The board shall waive the deposit for a renewal of license by electricians who have made an initial deposit under this section if at the beginning of the renewal year the fund exceeds ~~thirty~~ fifty thousand dollars. Funds in excess of ~~thirty~~ fifty thousand dollars at the end of each year may be committed and used at the direction of the board to inform and educate electricians concerning the requirements of the electrical code. The board may prescribe forms for the undertaking and make rules it deems necessary to carry out the intent of this section.

Approved March 8, 1999
Filed March 9, 1999

CHAPTER 375

HOUSE BILL NO. 1444

(Representatives Koppelman, Grumbo, Klein)
(Senators Krebsbach, Lee, Tomac)

ELECTRICIAN LICENSE EXEMPTIONS

AN ACT to amend and reenact section 43-09-16 of the North Dakota Century Code, relating to persons exempt from electrician's licensure requirements; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-16 of the North Dakota Century Code is amended and reenacted as follows:

43-09-16. When license not required. The following persons may not be required to hold an electrician's license:

1. Employees of public utilities engaged in the manufacture and distribution of electrical energy when engaged in work directly pertaining to the manufacture and distribution of electrical energy. This exemption terminates at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of their service.
2. Employees of a company that operates or installs telephone, ~~telegraph,~~ and radio communication ~~service~~ systems when engaged in work pertaining directly to ~~such service~~ the installation of telephone and radio communication conductors on premises where the installations are made for use exclusively for the transmission of telephone and radio signals.
3. Employees of dealers in household appliances, such as room air conditioners, clothes dryers, dishwashers, freezers, garbage disposals, refrigerators, stoves, washing machines, water heaters, and similar appliances when such employees are installing and connecting such appliances to an existing electrical receptacle.
4. A representative of a manufacturing firm that is installing or modifying controls of wiring solely on industrial machinery that is for use by the firm itself, and performed by or under the direction of a registered professional engineer who issues a state-accepted evaluation which is to be maintained with the equipment.

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

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 376**HOUSE BILL NO. 1403**

(Representatives Price, Metcalf)
(Senators Lee, Redlin)

**NURSE MEDICATION ADMINISTRATION AND
LICENSURE EXEMPTIONS**

AN ACT to provide a licensed nurse may delegate medication administration; to create and enact a new subsection to section 43-12.1-04 of the North Dakota Century Code, relating to persons exempt from nurse licensure; to require the department of human services and the North Dakota board of nursing to report to the legislative council and to make recommendations regarding administration of medications; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-12.1-04 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

A person who provides medication administration according to individual needs and as a part of an individual habilitation or case plan within a residential treatment center for children licensed under chapter 25-03.2, a treatment or care center for developmentally disabled persons licensed under chapter 25-16, or a residential child care facility licensed under chapter 50-11.

SECTION 2. Delegation of medication administration. A licensed nurse may delegate medication administration to a person exempt under section 1 of this Act.

SECTION 3. DEPARTMENT OF HUMAN SERVICES AND NORTH DAKOTA BOARD OF NURSING - RECOMMENDATION - REPORT TO LEGISLATIVE COUNCIL. The department of human services and the North Dakota board of nursing, after consultation with appropriate individuals and entities, shall prepare a joint recommendation for consideration by the fifty-seventh legislative assembly regarding the administration of medication according to section 1 of this Act. During the 1999-2000 interim, the department of human services and the North Dakota board of nursing shall report annually to the legislative council regarding the progress in preparing a joint recommendation under this section. By December 10, 2000, the department of human services shall certify to the governor and the legislative council regarding satisfaction of the reporting and recommendation requirements under this section.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 377

HOUSE BILL NO. 1159

(Human Services Committee)
(At the request of the State Board of Optometry)

OPTOMETRIST LICENSURE

AN ACT to amend and reenact sections 43-13-17 and 43-13-18 of the North Dakota Century Code, relating to licensure of optometrists by examination and endorsement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-17 of the North Dakota Century Code is amended and reenacted as follows:

43-13-17. Application for ~~examination~~ licensure - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for or to secure a 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 in the form prescribed by the board.~~ An application for admission by examination must be filed at least fifteen days before the date of the examination. ~~The application must be accompanied by the affidavits of two residents of this state to the effect that the applicant is of good moral character.~~ The applicant also shall furnish satisfactory proof that 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~~ Is a person of good moral character; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education ~~of the American optometric association.~~

~~Before receiving a license, the~~ The applicant shall pay to the secretary of the board a registration fee of a reasonable sum fixed by the board.

SECTION 2. AMENDMENT. Section 43-13-18 of the North Dakota Century Code is amended and reenacted as follows:

43-13-18. ~~When examination not required~~ Licensure by endorsement. An applicant may secure a license to practice optometry in this state without taking ~~the required examination upon~~ all required examinations as follows:

1. Presentation of a certified copy or an original certificate of registration or license in good standing issued to him the applicant by another state where the requirements for license are equivalent to those of this state and where like privileges are accorded to holders of licenses issued in this state; and
2. Payment of a reasonable sum fixed by the board: and

3. Unless waived by the board, all applicants for licensure by endorsement must:
- a. Apply for the highest level of therapeutic licensure in this state.
 - b. Be current in the continuing education requirements of their current state of licensure.
 - c. Pass a North Dakota state optometry law examination as required by the board to be given at such times and places as are prescribed by the board.
 - d. Have a minimum of four years of practice, federal service, or teaching experience as a licensed optometrist prior to making application.
 - e. Have not committed any act that would constitute grounds for disciplinary action under this chapter or the rules and regulations of the board.
 - f. Submit to an oral interview before such persons and at a time and place as prescribed by the board.

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

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 378

HOUSE BILL NO. 1388

(Representatives Nottestad, Ekstrom, Gorder)
(Senators T. Mathern, Robinson, Sand)

PHARMACIST EDUCATION AND PRACTICE

AN ACT to create and enact two new sections to chapter 43-15 of the North Dakota Century Code, relating to pharmacist education requirements and approved laboratory tests; and to amend and reenact subsection 23 of section 43-15-01 of the North Dakota Century Code, relating to the definition of practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁸ **SECTION 1. AMENDMENT.** Subsection 23 of section 43-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary as a primary health care provider of pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records ~~therefor~~ for this storage; the responsibility for advising, consulting, and educating ~~where~~ where if necessary or ~~where if~~ regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; ~~where if~~ appropriate and where if regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; emergency pharmacy practice; prescriptive practices as limited ~~herein~~ under this chapter; the performance of laboratory tests to provide pharmaceutical care services which are waived under the Federal Clinical Laboratory Improvement Act of 1988 [Pub. L. 100-578, section 2, 102 Stat. 2903; 42 U.S.C. 263a et seq.], as amended; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

²⁶⁸ Section 43-15-01 was also amended by section 4 of Senate Bill No. 2176, chapter 379.

SECTION 2. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Educational requirements - Rules. The board shall adopt rules establishing the educational requirements and quality control procedures for pharmacists who conduct laboratory tests provided in subsection 23 of section 43-15-01. These rules must include a requirement that pharmacists receive training for each specific test performed and a requirement that pharmacists demonstrate proficiency for each test performed following nationally recognized proficiency guidelines.

SECTION 3. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Approved laboratory tests. Approved laboratory tests are the following waived screening tests: glucose monitoring devices (FDA cleared/home use) 9221, cholesterol 1020, HDL cholesterol 2550, triglyceride 6118, and glycosylated hemoglobin (Hgb A1C) 2204. Additional tests may be added to this list as jointly determined by the board and the board of medical examiners.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 379

SENATE BILL NO. 2176

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

PHARMACY PRACTICE

AN ACT to amend and reenact subsection 20 of section 19-02.1-01, subsection 4 of section 19-03.1-11, subsections 3 and 4 of section 19-03.1-22, subsection 24 of section 43-15-01, sections 43-15-18, 43-15-31.3, and subsection 6 of section 43-15-35 of the North Dakota Century Code, relating to controlled substance regulation and the practice of pharmacy in North Dakota; and to repeal section 43-15-33 of the North Dakota Century Code, relating to sale of emergency medicines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 20 of section 19-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

20. ~~"Practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this chapter.~~ "Practitioner" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice which are subject to this chapter.

SECTION 2. AMENDMENT. Subsection 4 of section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Butorphanol.
 - e. Camazepam.
 - ~~e.~~ f. Chloral betaine.
 - ~~f.~~ g. Chloral hydrate.
 - ~~g.~~ h. Chlordiazepoxide.
 - ~~h.~~ i. Clobazam.

- ~~i~~: j. Clonazepam.
- ~~j~~: k. Clorazepate.
- ~~k~~: l. Clotiazepam.
- ~~l~~: m. Cloxazolam.
- ~~m~~: n. Delorazepam.
- ~~n~~: o. Diazepam.
- ~~o~~: p. Estazolam.
- ~~p~~: q. Ethchlorvynol.
- ~~q~~: r. Ethinamate.
- ~~r~~: s. Ethyl loflazepate.
- ~~s~~: t. Fludiazepam.
- ~~t~~: u. Flurazepam.
- ~~u~~: v. Halazepam.
- ~~v~~: w. Haloxazolam.
- ~~w~~: x. Ketazolam.
- ~~x~~: y. Loprazolam.
- ~~y~~: z. Lorazepam.
- ~~z~~: aa. Lormetazepam.
- ~~aa~~: bb. Mebutamate.
- ~~bb~~: cc. Medazepam.
- ~~cc~~: dd. Meprobamate.
- ~~dd~~: ee. Methohexital.
- ~~ee~~: ff. Methylphenobarbital (also known as mephobarbital).
- ~~ff~~: gg. Midazolam.
- ~~gg~~: hh. Nimetazepam.
- ~~hh~~: ii. Nitrazepam.
- ~~ii~~: jj. Nordiazepam.
- ~~jj~~: kk. Oxazepam.

- ~~kk.~~ ll. Oxazolam.
- ~~ll.~~ mm. Paraldehyde.
- ~~mm.~~ nn. Petrichloral.
- ~~nn.~~ oo. Phenobarbital.
- ~~oo.~~ pp. Pinazepam.
- ~~pp.~~ qq. Prazepam.
- ~~qq.~~ rr. Quazepam.
- ss. Sibutramine.
- ~~rr.~~ tt. Temazepam.
- ~~ss.~~ uu. Tetrazepam.
- ~~tt.~~ vv. Triazolam.
- ~~uu.~~ ww. Zolpidem.

SECTION 3. AMENDMENT. Subsections 3 and 4 of section 19-03.1-22 of the North Dakota Century Code are amended and reenacted as follows:

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this chapter or chapter 19-02.1, may not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank and must be signed within ~~seventy-two hours~~ seven days by the practitioner who issued the same. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.
4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule V must be dispensed without the written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times unless renewed by the practitioner. Any oral prescription for such compound, mixture, or preparation must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank and must be signed within ~~seventy-two hours~~ seven days by the practitioner who issued ~~same~~ the prescription. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

²⁶⁹ **SECTION 4. AMENDMENT.** Subsection 24 of section 43-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24. "Practitioner" means a ~~physician, dentist, veterinarian, scientific investigator, or other person (other than pharmacists) licensed by North Dakota and permitted by such license to dispense, conduct research with respect to or administer~~ an individual licensed, registered or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice or research in North Dakota.

SECTION 5. AMENDMENT. Section 43-15-18 of the North Dakota Century Code is amended and reenacted as follows:

43-15-18. License of pharmacy intern. To register in this state a pharmacy intern must have completed one year ~~in an approved~~ of college of pharmacy, be registered in a prepharmacy program, and must be employed by a licensed pharmacist. At the date of entering into ~~his~~ an intern internship, ~~he~~ an intern shall file with the ~~secretary~~ executive director of the board the following certificates accompanied by a fee ~~of five dollars~~ set by the board:

1. ~~A certificate~~ An application stating ~~he~~ the applicant has entered into an internship ~~and giving his age,~~ the intern's name, residence, and educational qualifications.
2. ~~A certificate~~ statement from ~~his~~ the intern's employer stating that the applicant ~~has been~~ will be employed by ~~him~~ the pharmacist, as a pharmacy intern, that to ~~his~~ the employer's knowledge the applicant possesses the required education and qualifications.

The ~~secretary~~ executive director of the board shall file the ~~certificates~~ application and license the applicant as a pharmacy intern.

SECTION 6. AMENDMENT. Section 43-15-31.3 of the North Dakota Century Code is amended and reenacted as follows:

43-15-31.3. Oral transmission of prescriptions. An oral transmission of a prescription drug may be accepted and dispensed by a pharmacist or licensed pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the prescription. The practitioner shall document the order for oral transmission in the patient's records. Only a licensed pharmacist or a licensed pharmacist intern or a registered pharmacy technician may receive an orally transmitted new or refill prescription.

SECTION 7. AMENDMENT. Subsection 6 of section 43-15-35 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~The pharmacy has within the pharmacy at all times the latest revision of the United States Pharmacopeia/National Formulary and supplements~~

²⁶⁹ Section 43-15-01 was also amended by section 1 of House Bill No. 1388, chapter 378.

thereto, or the United States Pharmacopeia Dispensing Information, volumes I and II (USPDI). Suitable reference sources either in book or electronic data form, available in the pharmacy or on-line, which might include the United States pharmacopeia and national formulary, the United States pharmacopeia dispensing information, facts and comparisons, micro medex, the ASHP formulary or other suitable references pertinent to the practice carried on in the licensed pharmacy.

SECTION 8. REPEAL. Section 43-15-33 of the North Dakota Century Code is repealed.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 380

HOUSE BILL NO. 1158

(Human Services Committee)

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

MEDICAL PRACTICE AND LICENSURE EXEMPTIONS

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to exceptions to the licensure requirements to practice medicine; and to amend and reenact sections 43-17-01, 43-17-02, 43-17-06, 43-17-30.1, and 43-17-31 of the North Dakota Century Code, relating to the definitions of practice of medicine, persons exempt from medical practice licensure requirements, officers of the board of medical examiners, and disciplinary action of the board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17-01. Definitions.

1. "Board" means the state board of medical examiners.
2. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
2. ~~3.~~ "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:
 - a. One who holds ~~himself~~ out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
 - b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
 - c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind.
 - d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to ~~his~~ the person's name, indicating that ~~he~~ the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings must be held to be engaged in the practice of medicine.
3. "~~Board~~" means the state board of medical examiners.

²⁷⁰ **SECTION 2. AMENDMENT.** Section 43-17-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-02. Persons exempt from the provisions of chapter. The provisions of this chapter do not apply to the following:

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the state board of medical examiners may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.
2. ~~Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state.~~
3. ~~The domestic administration of family remedies.~~
4. ~~3.~~ Dentists practicing their profession when properly licensed.
5. ~~4.~~ Optometrists practicing their profession when properly licensed.
6. ~~5.~~ The practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if ~~he~~ the person does not hold ~~himself~~ out to be a physician or surgeon.
7. ~~6.~~ Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
8. ~~7.~~ Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
9. ~~8.~~ Podiatrists practicing their profession when properly licensed.
10. ~~9.~~ Any person rendering services as a ~~physician's trained~~ physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners shall prescribe rules and regulations governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of ~~physicians' trained~~ physician assistants. ~~Physicians'~~

²⁷⁰ Section 43-17-02 was also amended by section 63 of House Bill No. 1045, chapter 50.

~~trained~~ Physician assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

44. 10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
42. 11. A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners prescribes rules governing the conduct, permits, fees, qualifications, activities, discipline, and supervision of radiologic technologists who provide those services.

SECTION 3. AMENDMENT. Section 43-17-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17-06. Officers of the board. The board shall elect a president and vice president from its own number and a secretary-treasurer. The secretary-treasurer need not be a member of the board. ~~He~~ The secretary-treasurer must be the general administrative and prosecuting officer of such board.

SECTION 4. AMENDMENT. Section 43-17-30.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-30.1. Disciplinary action. The board is authorized to take disciplinary action against a licensed physician by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the practice of medicine.
5. ~~Reprimand.~~
6. Letter of censure.
7. ~~Letter of concern.~~
8. 6. Require the licensee to provide free public or charitable service for a defined period.
9. 7. Impose fines, not to exceed five thousand dollars for any single disciplinary action, ~~in a case of failure to comply with statutory reporting requirements, or a violation of examination security.~~ Any fines collected by the state board of medical examiners must be deposited in the state general fund.

SECTION 5. AMENDMENT. Section 43-17-31 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
4. Habitual use of alcohol or drugs.
5. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. Obtaining any fee by fraud, deceit, or misrepresentation.
8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or the commission on medical competency.
10. The practice of medicine under a false or assumed name.
11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.

17. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
19. The failure to comply with the reporting requirements of section 43-17.1-05.1.
20. The failure to transfer medical records, except those relating to psychiatric treatment which must be governed by board rule, to another physician or to supply copies thereof to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative. A reasonable charge for record copies may be assessed.
21. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
22. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
23. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
24. The violation of any state or federal statute or regulation relating to controlled substances.
25. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
26. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
27. The failure to properly monitor a physician assistant, a fluoroscopy technologist, or an emergency medical technician.
28. The failure to furnish the board or the ~~commission on medical competency~~ investigative panel, their investigators, or representatives, information legally requested by the board or the ~~commission~~ investigative panel.

The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

SECTION 6. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Practice of medicine or osteopathy by holder of permanent, unrestricted license. Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the state board of medical examiners under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation or teaching assistance for a period of not more than twenty-four hours; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 381

HOUSE BILL NO. 1157

(Human Services Committee)

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

COMMISSION ON MEDICAL COMPETENCY

AN ACT to amend and reenact sections 23-34-03, 43-17-03, 43-17.1-01, 43-17.1-02, 43-17.1-04, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, 43-17.1-08, and 43-17.1-09 of the North Dakota Century Code, relating to the commission on medical competency; and to repeal section 43-17.1-03 of the North Dakota Century Code, relating to compensation of members of the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-34-03. Peer review records - Privileged - Exceptions. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

1. Records gathered from an original source that is not a peer review committee;
2. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. Peer review records subpoenaed in an investigation conducted by ~~the commission on medical competency~~ an investigative panel of the board of medical examiners pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1. Any peer review records provided to ~~the commission~~ an investigative panel of the board of medical examiners or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17-03. State board of medical examiners - How appointed - Qualifications.

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

2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. ~~The~~ Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. A person appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 3. AMENDMENT. Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "~~Commission~~" "Board" means the ~~commission on medical competency state board of medical examiners.~~
2. "~~Commissioner~~" means the ~~commissioner of insurance.~~
3. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

SECTION 4. AMENDMENT. Section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-02. ~~Commission on medical competency~~ Investigative panels of the board.

1. There is hereby created a ~~commission on medical competency~~ which must consist of:
 - a. ~~Two members of the state board of medical examiners appointed by the chairman of the board to two-year terms, except one of the initial appointees must be appointed for a term of three years.~~
 - b. ~~Two physicians in active practice who have been actively engaged in the practice of medicine in this state for at least eight years, selected by the state medical association. Members so selected shall serve three-year terms, except one of the initial members so selected shall serve for only two years.~~

- e. ~~The commissioner and the attorney general, or their designated representatives.~~

~~No appointed member of the commission may serve more than two terms consecutively. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of five members of the board, excluding the president. Four members of each panel must be physician members of the board. One member of each panel must be a public member of the board. In addition, the president of the board shall serve on both investigative panels.~~

2. ~~The commission~~ Each investigative panel shall select a chairman and a vice chairman from its own members, and a secretary who may or may not be a member of the ~~commission~~ panel and who shall keep minutes of all meetings thereof.
3. ~~The commission may employ an executive secretary,~~ Each investigative panel may engage investigators, medical experts, and such other experts as the ~~commission~~ panel in its discretion determines to be necessary to accomplish its purposes. The attorney general shall provide counsel to the ~~commission~~ investigative panels, but ~~the commission~~ an investigative panel may employ special counsel in any proceeding wherein it decides it is advisable.
4. Cases for investigation must be assigned to each investigative panel by the president of the board.

SECTION 5. AMENDMENT. Section 43-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-04. ~~Commission meetings~~ Meetings of investigative panels. Meetings of the ~~commission~~ investigative panels must be held at least once annually in Bismarck, North Dakota, and at such other place or places within the state and at such times as ~~the commission~~ each investigative panel may determine. A majority of the members of ~~the commission~~ an investigative panel constitutes a quorum, and no action of ~~the commission~~ an investigative panel is effective without the concurrence therein of a majority of ~~its~~ the members present at the time of the decision. Special meetings of ~~the commission~~ an investigative panel may be called at any time by the chairman or vice chairman of ~~the commission~~ an investigative panel or upon the written request of any three members of ~~the commission~~ an investigative panel.

SECTION 6. AMENDMENT. Section 43-17.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. ~~All residents have the right to~~ Any person may make or refer written complaints to the ~~commission~~ investigative panels with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that ~~the commission~~ an investigative panel review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes

a report to the ~~commission on medical competency~~ investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the ~~commission~~ investigative panel shall conduct the investigation as it deems necessary to resolve the matter as it deems appropriate. The ~~commission~~ investigative panel shall determine whether ~~the~~ a formal hearing should be held to determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by ~~section 43-17-31~~ law.

2. If the ~~commission~~ investigative panel determines that a formal hearing should be held to determine whether any licensed physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by ~~section 43-17-31~~ law, it shall inform the respondent physician, physician assistant, or fluoroscopy technologist involved of the specific charges to be considered by serving upon ~~him~~ that person a copy of a formal complaint filed with the board of medical examiners for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the ~~commission~~ investigative panel may not participate in any proceeding before the board relating to said complaint. The complaint must be prosecuted before the board by the attorney general or one of ~~his~~ the attorney general's assistants.
3. If ~~the commission~~ an investigative panel finds that there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The ~~commission~~ investigative panel shall provide written notice to the individual or entity filing the original complaint and the person who is the subject of the complaint of the ~~commission's~~ investigative panel's final action or recommendations, if any, concerning the complaint.

SECTION 7. AMENDMENT. Section 43-17.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to ~~commission on medical competency~~ - When required Reporting requirements. A physician, a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the ~~commission~~ investigative panel of the board. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the ~~commission~~ investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee ~~the commission~~ an investigative panel shall, or on its own motion ~~the commission~~ an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes

of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or ~~radiology~~ fluoroscopy technologist who violates this section is subject to administrative action by the North Dakota state board of medical examiners as specified by law or by administrative rule.

²⁷¹ **SECTION 8. AMENDMENT.** Section 43-17.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-06. ~~Commission powers~~ Powers of the board's investigative panels.
The ~~commission~~ board's investigative panels may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician, physician assistant, or fluoroscopy technologist under investigation. The confidentiality of the records by any other statute or law does not affect the validity of ~~the commission's~~ an investigative panel's subpoena nor the admissibility of the records and board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination, or chemical dependency evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators when necessary.
6. Hold confidential conferences with any complainant or any physician, physician assistant, or fluoroscopy technologist with respect to any complaint.
7. File a formal complaint against any licensed physician, physician assistant, or fluoroscopy technologist with the state board of medical examiners.

²⁷¹ Section 43-17.1-06 was also amended by section 64 of House Bill No. 1045, chapter 50.

SECTION 9. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 10. AMENDMENT. Section 43-17.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-09. ~~Commission immunity~~ Immunity. Members of the ~~commission~~ investigative panels, special masters appointed by ~~it~~ an investigative panel, and agents of ~~the commission~~ an investigative panel, are immune from any liability of any kind based upon any acts or omissions in the course of the performance of responsibilities in an official capacity except liability for bodily injury arising out of accidents caused, or contributed to, by the negligence of the member or agent.

SECTION 11. REPEAL. Section 43-17.1-03 of the North Dakota Century Code is repealed.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 382

SENATE BILL NO. 2098

(Industry, Business and Labor Committee)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER CONTINUING EDUCATION

AN ACT to amend and reenact section 43-23-08.2 of the North Dakota Century Code, relating to continuing education requirements for real estate brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-08.2 of the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, ~~1984~~ 2000, and every ~~three~~ two years thereafter, each applicant for renewal of a broker's or salesperson's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than ~~twenty-four~~ sixteen hours of approved continuing education, six of which must be completed in the first year. If a broker or salesperson will not have been licensed ~~three~~ two years on the date the individual is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules ~~promulgated~~ adopted by the commission. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses may not require passing of a test to qualify for satisfaction of this requirement. Licensees shall have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course must be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.

~~No~~ A license may not be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission in accordance with section 43-23-13.1.

The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, are exempt from the requirements of this section.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 383**SENATE BILL NO. 2064**

(Senators Watne, Traynor)

**REAL ESTATE TRANSACTION SEXUAL OFFENDER
DISCLOSURE**

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to the duty to disclose information on sexual offenders in a real estate transaction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Disclosure of sexual offenders. A licensee is not liable for any action resulting from any disclosure or nondisclosure relating to the registration of sexual offenders under section 12.1-32-15.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 384

HOUSE BILL NO. 1164

(Industry, Business and Labor Committee)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER FUNDS

AN ACT to amend and reenact section 43-23-14.1 of the North Dakota Century Code, relating to handling of funds by real estate brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-14.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-14.1. Handling of funds by brokers. ~~Every~~ Except as otherwise provided in this section, every broker shall, at all times, maintain in ~~his~~ the broker's name or firm name, a separate trust account designated as such in a federally insured financial institution in this state in which ~~he~~ the broker shall immediately place as a demand deposit all funds not ~~his~~ the broker's own coming into ~~his~~ the broker's possession, in accordance with rules ~~and regulations promulgated~~ adopted by the commission. This requirement extends to funds in which ~~he~~ the broker may have some future interest or claim and includes; ~~but is not limited to,~~ earnest money deposits. Provided, the deposit of funds may be made in an interest-bearing account in a federally insured bank, trust company, savings and loan association, or credit union if all parties having an interest in the funds have ~~so~~ agreed in writing and if a copy of the agreement is maintained on file by the broker. ~~No~~ A broker may ~~not~~ commingle ~~his~~ the broker's personal funds or other funds in a trust account, except that a broker may deposit and keep a sum not to exceed ~~one~~ five hundred dollars in ~~such~~ the account from ~~his~~ the broker's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such~~ the account, ~~he~~ the broker shall maintain at ~~his~~ the broker's usual place of business, books, records, contracts, and other necessary documents so that the adequacy of ~~such~~ the account may be determined at any time. Trust accounts and other records must be open to inspection by the commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

A broker who does not accept trust funds in real estate brokerage transactions and who has applied for and received a waiver from the real estate commission is not required to maintain a designated trust account. However, if a broker does not maintain a trust account and later receives trust funds in a real estate brokerage transaction, the broker shall open a designated trust account as required by this section and deposit any trust funds in accordance with rules adopted by the commission.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 385**SENATE BILL NO. 2286**
(Senator Tomac)**REAL ESTATE APPRAISER RECORD
CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 43-23.3 and a new subsection to section 43-23.3-03 of the North Dakota Century Code, relating to confidentiality of real estate appraiser records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Public records exception. Documents obtained by the board as part of the licensing, investigation, or disciplinary process which are deemed confidential under the uniform standards of professional appraisal practices are exempt records as defined in subsection 5 of section 44-04-17.1.

SECTION 2. A new subsection to section 43-23.3-03 of the North Dakota Century Code is created and enacted as follows:

The board or its authorized representative may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-23.3 or the rules of the board. Board investigative files are exempt records as defined in subsection 5 of section 44-04-17.1, but a copy of the investigative file must be provided to a licensee if a complaint is filed against the licensee by the board.

Approved March 4, 1999
Filed March 5, 1999

CHAPTER 386**SENATE BILL NO. 2275**

(Senator Grindberg)

MASSAGE PRACTICE

AN ACT to create and enact a new subsection to section 43-25-04 of the North Dakota Century Code, relating to the practice of massage; to amend and reenact subsection 3 of section 43-25-04 of the North Dakota Century Code, relating to physical therapist assistants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-25-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Registered physical therapists and physical therapist assistants under the laws of this state.

SECTION 2. A new subsection to section 43-25-04 of the North Dakota Century Code is created and enacted as follows:

Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist.

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

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 387**SENATE BILL NO. 2309**

(Senator Tomac)

MASSAGE SCHOOL ACCREDITATION

AN ACT to amend and reenact subdivision a of subsection 1 of section 43-25-07 of the North Dakota Century Code, relating to school of massage therapy accreditation standards; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 43-25-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board; which may not be less than the standards of the American massage therapy association commission on massage therapy accreditation; or if the board has not adopted standards, the school of massage meets the curriculum guidelines of the American massage therapy association commission on massage therapy accreditation and the school requires at least seven hundred fifty hours of supervised instruction. Any student enrolled in a massage school on or before the effective date of this Act satisfies the requirements in this subdivision if the student presents a diploma or credentials issued by a school of massage that requires at least five hundred hours of instruction.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

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

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 388

HOUSE BILL NO. 1074

(Agriculture Committee)

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

VETERINARIAN EXAMINATION AND LICENSURE

AN ACT to amend and reenact subsection 5 of section 43-29-01.1, subsection 1 of section 43-29-07, subsections 2 and 3 of section 43-29-07.1, and subsection 2 of section 43-29-07.2 of the North Dakota Century Code, relating to examination and licensure of veterinarians and veterinary technicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-29-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Certificate" means a certificate issued by the ~~American veterinary medical association~~ educational commission for foreign veterinary graduates, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

SECTION 2. AMENDMENT. Subsection 1 of section 43-29-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Any~~ A person desiring a license to practice veterinary medicine in this state shall make written application to the board. The application must show the applicant is a graduate of an accredited or approved college of veterinary medicine or the holder of a certificate. The application must also show the applicant is a person of good moral character and any other information and proof the board may require. The application must be accompanied by a fee in the amount established by the board. If the board determines an applicant possesses the proper qualifications, the board shall admit the applicant to the next examination. If the applicant is eligible for license without examination under section 43-29-07.2, the board may grant the applicant a license. If an applicant is found not qualified to take the examination or for a ~~license~~ license without examination, the board shall immediately notify the applicant in writing of this finding and the grounds of this finding. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 43-29-07.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. An applicant for licensure as a veterinary technician must pass the veterinary technician national examination with a score ~~of at least~~ seventy percent approved by the board.

3. An applicant for licensure as a veterinary technician who has successfully passed the veterinary technician national examination shall request that the applicant's examination scores be forwarded to the board ~~by the professional examination service~~. An applicant is eligible for licensure upon meeting the licensure requirements set by the board.

SECTION 4. AMENDMENT. Subsection 2 of section 43-29-07.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof of graduation from an accredited or approved college of veterinary medicine, or holds a certificate, and who:
 - a. Has for the five years immediately before filing of the application been a practicing veterinarian licensed in a state having license requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this chapter;
 - b. Has within the three years immediately before filing the application successfully completed the examinations provided by the national board ~~of veterinary medical examiners~~ examination committee; or
 - c. Currently holds a license to practice in at least one state, has active diplomat status in a specialty organization recognized by the American veterinary medical association, and whose practice is limited to the certified specialty in the state in which the specialist is licensed without examination.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 389

HOUSE BILL NO. 1294

(Representatives Boehm, Kempenich, Renner)
(Senator Solberg)

VETERINARY MEDICINE PRACTICE

AN ACT to amend and reenact section 43-29-13 of the North Dakota Century Code, relating to the practice of veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Those who administer to livestock, the title to which rests in themselves, or in their regular employer, except where the ownership of the animal was transferred to avoid the requirements of this chapter, or those who perform gratuitous services.
2. Anyone who conducts experiments in scientific research in the development of methods, techniques, or treatment, directly or indirectly applicable to the problems of medicine, and who in connection with these activities uses animals.
3. Anyone who is a regular student in an accredited or approved college of veterinary medicine performing duties or actions assigned by an instructor or working under the direct supervision of a licensed veterinarian during a school vacation period.
4. Anyone licensed in another state or nation when engaged in this state in consultation with veterinarians legally practicing herein.
5. A senior student who is in an approved school of veterinary medicine and who obtains from the board a student permit to practice in the office and under the direct supervision of any veterinarian practicing within this state.
6. Any employee of the United States or this state while in the performance of duties as employees.
7. Any merchant or manufacturer selling medicine, feed, an appliance, or any other product used in the prevention or treatment of animal diseases.
8. Any veterinary technician or other employee of a licensed veterinarian performing duties under the direction and supervision of the veterinarian responsible for the technician's or other employee's performance.

9. Any member of the faculty of an accredited college of veterinary medicine performing regular functions or a person lecturing or giving instructions or demonstrations at an accredited college of veterinary medicine or in connection with a continuing education course or seminar.
10. Any person selling or applying any pesticide, insecticide, or herbicide.
11. Any graduate of a foreign college of veterinary medicine who is in the process of obtaining a certificate and is performing duties or actions assigned by the graduate's instructors in an accredited or approved college of veterinary medicine.
12. Any person performing a direct embryo transfer procedure on a recipient cow. Except as provided in this subsection, a person performing a direct embryo transfer procedure on a recipient cow may not administer prescription drugs to the cow during, or as part of, the procedure. The owner of the recipient cow, however, may administer or cause the administration of prescription drugs to the recipient cow during, or as part of, the procedure if a veterinarian-client-patient relationship exists.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 390

HOUSE BILL NO. 1081

(Industry, Business and Labor Committee)

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

PRIVATE INVESTIGATIVE AND SECURITY SERVICE LICENSURE

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to temporary private investigative and security service licenses or registrations; and to amend and reenact sections 43-30-04, 43-30-06, and 43-30-16 of the North Dakota Century Code, relating to fees and criminal history record checks for applicants for a license or registration to provide private investigative and security services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-04 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Section 43-30-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License and registration applications. Every person who desires to obtain a license or registration shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board ~~may~~ shall require each applicant ~~for certification~~ to file with the board a complete set of the applicant's fingerprints; ~~taken by a law enforcement officer~~, and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal history check performed by the federal bureau of investigation at the

request of another state and if the nationwide criminal history check was performed within the sixty days immediately preceding the date of the application. A state criminal history check is not required under this section if an applicant for registration provides to the board the results of a state background check performed by the state in which the applicant currently resides and if the state background check was performed within the sixty days immediately preceding the date of the application.

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

Temporary license or registration. The board may issue a temporary license or registration upon payment of the required application fee and satisfaction of all other requirements set by the board for licensure or registration under this chapter except for completion of a nationwide criminal history record check on the applicant under section 43-30-06. A temporary license or registration issued under this section expires without further action by the board on the date the board receives the results of the nationwide criminal history record check on the applicant. An additional fee may not be charged for the temporary license or registration, but an application fee is not refundable if the board denies the application.

SECTION 4. AMENDMENT. Section 43-30-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-30-16. Examination and, license, and registration fees. The board may establish by rule and charge the following fees:

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services ~~is~~ may not exceed one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services ~~is~~ may not exceed one hundred fifty dollars. A late fee not to exceed fifty dollars may be charged for each month the renewal fee is due and unpaid.
3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency ~~is~~ may not exceed one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency ~~is~~ may not exceed three hundred dollars. A late fee not to exceed one hundred dollars may be charged for each month the renewal fee is due and unpaid.
5. The one-time fee to be paid by an applicant for the issuance of a private security training certificate ~~is~~ may not exceed twenty-five dollars.
6. The annual fee to be paid by an applicant for the issuance of an armed private security certificate ~~is~~ may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

7. The fee to be paid for the issuance of a duplicate license ~~is~~ may not exceed twenty dollars.
8. The initial registration fee to provide private investigative service or private security service ~~is~~ may not exceed twenty dollars. The fee for the renewal of a registration to provide private investigative service or private security service ~~is~~ may not exceed five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 391

HOUSE BILL NO. 1152

(Human Services Committee)

(At the request of the Board of Psychologist Examiners)

PSYCHOLOGY PRACTICE AND LICENSURE

AN ACT to amend and reenact sections 43-32-13 and 43-32-30 of the North Dakota Century Code, relating to the practice of psychology and the authority of the board of psychologist examiners to deny renewal of a license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and fee. Before January first of each year, every licensed psychologist in the state shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred dollars. The secretary of the board, upon payment of the annual license fee by a person licensed under this chapter, shall issue a certificate of annual license. A person may not hold oneself out as a licensed psychologist until the annual license fee is paid. The board ~~shall revoke~~ may deny renewal of the license of a person who violates this section. Annually, the board shall mail a renewal notice to all licensed psychologists at the address on file with the board.

SECTION 2. AMENDMENT. Section 43-32-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Any person in the employ of any federal, state, county or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the activities and services of the person are a part of the duties of the person's office or position with such agency, nonprofit corporation, or institution. This exemption is not available or effective after July 1, ~~1999~~ 2001. However, the exemption period may be extended by the board in individual cases where hardship or other good cause is shown by the agency, nonprofit corporation, or institution covered, or where the person affected has received from a school or college a master's degree in psychology and the person's activities and services with such agency, nonprofit corporation, or institution are performed under the supervision of a licensed psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.
2. A student or intern pursuing a course of study in psychology at a school or college, if the activities and services are a part of the person's supervised course of study, provided the student or intern does not use the title "psychologist" and the student or intern status is clearly stated.

3. A nonresident licensed or certified in the state of the person's residence who does not practice psychology in this state for a period of more than thirty days in any calendar year.
4. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology unless the lecturer is licensed to practice psychology in this state.
5. A person employed by a public school and whose activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only when the person has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
6. A person certified, licensed, or registered in this state in another health care profession, whose scope of practice is consistent with the accepted standards of that person's profession, and who does not represent to be rendering psychological services.
7. An applicant licensed to practice psychology in another jurisdiction, pending disposition of the applicant's application, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
8. A person employed by an agency, nonprofit corporation, or institution who is currently exempt from licensure continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
9. A psychologist resident performing services supervised as provided under section 43-32-20.1.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 392

HOUSE BILL NO. 1227 (Representatives Wald, Haas) (Senator Wardner)

WATER WELL CONTRACTOR CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-35 of the North Dakota Century Code, relating to water well contractor continuing education requirements; to amend and reenact section 43-35-17 of the North Dakota Century Code, relating to water well contractor continuing education requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-35-17 of the North Dakota Century Code is amended and reenacted as follows:

43-35-17. Renewal of certificate - Continuing education. A certificate issued under ~~the provisions of~~ this chapter is valid for up to one year and expires on the thirty-first day of December in the year it ~~was issued~~ of issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed twelve hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made prior to before April first in the year following its the certificate's expiration, must be accompanied by a fee in an amount to be set by the board not to exceed fifty dollars, and the furnishing of must be accompanied by a bond as provided in section 43-35-14.

SECTION 2. A new section to chapter 43-35 of the North Dakota Century Code is created and enacted as follows:

Continuing education - Preapproval requirements. Each certificate holder shall earn at least twelve hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the state department of health, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

SECTION 3. EFFECTIVE DATE. This Act becomes effective January 1, 2000, and applies to all applications for certificate renewal beginning with the 2001 certificate year.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 393

SENATE BILL NO. 2190 (Senators Wardner, Urlacher)

PROFESSIONAL SOIL CLASSIFIER BOARD AND REGISTRATION

AN ACT to amend and reenact sections 43-36-04, 43-36-07, 43-36-11, and 43-36-15 of the North Dakota Century Code, relating to the state board of registration for professional soil classifiers, reciprocal registration, and registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-36-04 of the North Dakota Century Code is amended and reenacted as follows:

43-36-04. Board - Compensation and expenses. Each member of the board ~~may receive twenty five dollars for each day actually engaged in the services of the board and shall be reimbursed for all actual traveling, incidental and clerical~~ is entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses necessarily incurred in carrying out the provisions of this chapter as provided by law for state officers, if attending board meetings or performing duties directed by the board.

SECTION 2. AMENDMENT. Section 43-36-07 of the North Dakota Century Code is amended and reenacted as follows:

43-36-07. Board - Powers. The board has the power to administer this chapter under chapter 28-32 and:

1. To adopt and amend all bylaws, rules of procedure and regulations to administer and carry out the provisions of this chapter and for the conduct of its affairs and functions consistent with the constitution and laws of this state or this chapter which may be reasonably necessary for the proper performance of its duties and the regulation of its proceedings, meetings, records, examinations and the conduct thereof, and to adopt and promulgate a code of ethics which is binding upon all persons registered under or subject to this chapter.
2. To employ such clerks, technical experts and attorneys as it may deem necessary or desirable to carry out the provisions of this chapter.
3. To apply in the name of the state for relief by injunction without bond, to enforce the provisions of this chapter or to restrain any violation thereof. In such proceedings it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board are not personally liable under this proceeding.
4. To negotiate and enter reciprocal agreements with similar agencies in other states; provided that a reciprocal agreement may not limit the

board's powers and duties regarding any application for registration as a professional soil classifier or for certification as a soil classifier-in-training or regarding the enforcement of this chapter or any rules adopted to implement this chapter.

SECTION 3. AMENDMENT. Section 43-36-11 of the North Dakota Century Code is amended and reenacted as follows:

43-36-11. Registration without examination - Professional soil classifier Reciprocity. An applicant otherwise qualified must be admitted to registration as a professional soil classifier without examination ~~within one year after July 4, 1973,~~ upon payment of the required fees if he is:

1. ~~A person~~ The applicant is of good character ~~who~~, has been a resident of the state of ~~North Dakota~~ for at least one year immediately preceding the date of ~~his~~ application ~~and~~, was a practicing soil classifier on July 1, 1973, ~~and~~ meets the requirements of this chapter, and has performed work of a character satisfactory to the board; or
2. ~~A person holding~~ The applicant holds a certificate of registration in the practice of soil classifying ~~on the basis of comparable qualifications issued to him by a proper authority of another state, possession of territory of the United States and who in the opinion of the board meets the requirements of this chapter issued by another state, the District of Columbia, a Canadian province, or a foreign country, in which the requirements are substantially similar to those of this state.~~

SECTION 4. AMENDMENT. Section 43-36-15 of the North Dakota Century Code is amended and reenacted as follows:

43-36-15. Registration fees.

1. ~~Registration~~ The board shall establish registration fees must be established by the board subject to the following limitations provided:
 - ~~1.~~ a. The registration fee for in-state professional soil classifiers must be ~~in an amount not less than at least twenty nor~~ dollars but not more than one hundred dollars.
 - ~~2.~~ b. The registration fee for in-state soil classifier-in-training certification or enrollment must be ~~established by the board in an amount not less than at least ten nor~~ dollars but not more than fifty dollars.
 - c. The registration fee for out-of-state professional soil classifiers must be at least fifty dollars but not more than one hundred dollars.
- ~~3.~~ 2. ~~Should~~ If the board ~~deny~~ denies the issuance of a certificate to an applicant, the fee ~~paid must be retained as an~~ board shall retain the application fee.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 394

HOUSE BILL NO. 1467

(Representatives Svedjan, Nelson, Keiser, Carlisle)
(Senators Kilzer, Kinnoin)

OCCUPATIONAL THERAPIST LICENSING AND PRACTICE

AN ACT to create and enact three new sections to chapter 43-40 of the North Dakota Century Code, relating to complaints and investigations against occupational therapists and occupational therapy assistants and the board of occupational therapy practice recovering costs of prosecution; to amend and reenact sections 43-40-01, 43-40-02, 43-40-03, 43-40-04, 43-40-08, 43-40-10, 43-40-11, 43-40-12, 43-40-13, 43-40-15, 43-40-16, and 43-40-18 of the North Dakota Century Code, relating to licensing and practice of occupational therapists; to repeal section 43-40-09 of the North Dakota Century Code, relating to licensing occupational therapy assistants; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-40-01 of the North Dakota Century Code is amended and reenacted as follows:

43-40-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Association" means the North Dakota occupational therapy association.
2. "Board" means the board of occupational therapy practice.
3. "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.
4. "Occupational therapist therapy assistant" means a person licensed to assist in the practice of occupational therapy, under this chapter, who works under the supervision of an occupational therapist.
5. "Occupational therapy practice" means the use of occupation and purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences, or the aging process in order to maximize independence, prevent disability, and maintain health or intervention designed to achieve functional outcomes that promote health, prevent injury or disability and which develop, improve, sustain, or restore the highest possible level of independence of any individual who has an injury, illness, cognitive impairment, psychosocial dysfunction, mental illness, developmental or learning disability, physical disability or other disorder or condition, and occupational therapy education. The Occupational therapy encompasses evaluation, treatment, and consultation, research, and education. Specific occupational Occupational therapy services include teaching practice

includes evaluation by skilled observation, administration, and interpretation of standardized and nonstandardized tests and measurements. The occupational therapy practitioner designs and implements interventions directed toward developing, improving, sustaining, and restoring sensorimotor, neuromuscular, emotional, cognitive, or psychosocial performance components. Interventions include activities that contribute to optimal occupational performance including self-care; daily living skills; developing perceptual-motor skills and sensory integrative functioning; developing skills essential for productivity, functional communication and mobility; positioning; social integration; cognitive mechanisms; enhancing play skills and prevocational and leisure capacities; designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment; using specifically designed crafts and exercises to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and adapting environments for the handicapped skills; and the design, provision, and training in the use of assistive technology, devices, orthotics, or prosthetics or environmental adaptations to accommodate for loss of occupational performance. The therapy Therapy may be provided individually, or in groups, or through social systems to prevent secondary conditions, promote community integration, and support the individual's health and well-being within the social and cultural contexts of the individual's natural environment.

6. 5. "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advance training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy in accordance with rules adopted by the board.
6. "Occupational therapy student" is a person enrolled in an accredited occupational therapy education program.

SECTION 2. AMENDMENT. Section 43-40-02 of the North Dakota Century Code is amended and reenacted as follows:

43-40-02. License required - Title - Abbreviation. A person may not practice occupational therapy or hold oneself out as an occupational therapist, or as being able to practice occupational therapy, or to render occupational therapy services in this state unless that person is licensed under this chapter. Only individuals may be licensed under this chapter. An individual licensed under this chapter as an occupational therapist may use the title "occupational therapist" and the abbreviation "O.T.R." "OT/L" or other designation approved by the board. An individual licensed under this chapter as an occupational therapy assistant may use the title "occupational therapy assistant" and the abbreviation "C.O.T.A." "OTA/L" or other designation approved by the board. No other individual may use these names or abbreviations.

SECTION 3. AMENDMENT. Section 43-40-03 of the North Dakota Century Code is amended and reenacted as follows:

43-40-03. Persons and practices not affected by chapter. This chapter does not prevent or restrict the practice, services, or activities of:

1. ~~Any person licensed in this state to engage in the profession or occupation for which licensed. Services by a person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is an occupational therapist or occupational therapy assistant.~~
2. Any person employed as an occupational therapist or occupational therapy assistant by the United States or any agency of it, if the person provides occupational therapy solely under the direction or control of the organization by which employed.
3. ~~Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if the person is designated by a title which clearly indicates that person's status as a student or trainee.~~
4. ~~Any person fulfilling the supervised fieldwork experience requirements of subsection 3 of section 43-40-08, if the experience constitutes a part of the experience necessary to meet the requirement of that section.~~
5. Any person performing occupational therapy services consultation, continuing education, inservice, or pre-service training in this state, if these services are performed for no more than ninety thirty days in a calendar year in association with an occupational therapist licensed under this chapter, if:
 - a. The person is licensed or registered under the law of another state which has licensure regulatory requirements at least as stringent as the requirements of this chapter; or
 - b. The person meets the requirements for certification as an occupational therapist registered ~~(O.T.R.)~~ or a certified occupational therapy assistant ~~(C.O.T.A.)~~, established by ~~the American~~ a national occupational therapy association certifying agency approved by the board.
6. ~~Any person employed as an occupational therapy aide.~~

SECTION 4. AMENDMENT. Section 43-40-04 of the North Dakota Century Code is amended and reenacted as follows:

43-40-04. Board of occupational therapy practice - Appointment - Meetings.

1. There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, ~~four of whom must be appointed from a list of names submitted by the North Dakota occupational therapy association,~~ all of whom must be residents of this state at the time of their appointment. ~~The persons occupational therapy practitioners appointed from the list submitted by the association~~ must have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least three years immediately preceding their appointments. Three board members must be licensed occupational therapists. One member must be ~~an~~ a licensed occupational therapy assistant. ~~The members of the first board need not be licensed for appointment to the board but they must fulfill the requirements for licensure under this chapter. One~~

member must represent the public with an interest in the rights of the consumers of health services.

2. ~~The governor, prior to September 1, 1983, shall appoint two board members for a term of one year, two for a term of two years, and one for a term of three years. Appointments made thereafter must be for three-year terms, but no person may be appointed to serve more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed; except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.~~
3. ~~Prior to August 1, 1983, and annually thereafter, the association may submit at least three and not more than five names for each of the five board positions under subsection 2. If a vacancy in one of the positions exists, the association may recommend, as soon as practical, at least two and not more than three persons to fill that vacancy. The governor shall appoint, as soon as practical, one of these persons to fill the unexpired term. If the association does not provide a recommendation, the governor shall appoint, as soon as practicable, a person to the unexpired term.~~
4. ~~The board shall meet during the first month of each calendar year to select a chairman and for other purposes. 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 chairman or the written request of any two board members. All meetings of the board are open to the public, except that the board may hold closed sessions to approve examinations, or upon request of an applicant who fails an examination, to prepare a response indicating any reason for the applicant's failure.~~
5. ~~Members of the board may receive no compensation for their services, but are entitled to reasonable travel and other expenses incurred in the execution of their powers and duties, as set by the board.~~

SECTION 5. AMENDMENT. Section 43-40-08 of the North Dakota Century Code is amended and reenacted as follows:

43-40-08. Requirements for licensure. An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board, ~~showing~~ demonstrating to the satisfaction of the board that the applicant:

1. ~~Is of good moral character~~ competent.
2. Will adhere to the code of ethics adopted by the board.
3. Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the board.
 - a. ~~The occupational therapy educational program must be accredited by the committee on allied health education and accreditation/American medical association in collaboration with the American occupational therapy association a national occupational therapy accrediting agency approved by the board.~~

- b. The occupational therapy assistant educational program must be ~~approved~~ accredited by the American occupational therapy association ~~a national occupational therapy accrediting agency approved by the board.~~
3. ~~4.~~ Has successfully completed a period of supervised fieldwork experience ~~arranged~~ required by the ~~recognized~~ accredited educational institution where the applicant met the academic requirements required by ~~the nationally recognized professional association~~ a national occupational therapy accrediting agency approved by the board.
 - a. ~~For an occupational therapist, a minimum of six months of supervised fieldwork experience is required.~~
 - b. ~~For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.~~
4. ~~5.~~ Has passed an examination ~~as provided for in section 43-40-10~~ approved by the board.

SECTION 6. AMENDMENT. Section 43-40-10 of the North Dakota Century Code is amended and reenacted as follows:

43-40-10. ~~Foreign-trained~~ Internationally trained applicants. ~~Foreign-trained~~ Internationally trained occupational therapists and occupational therapy assistants shall satisfy the ~~examination~~ requirements of subsection 4 of section ~~43-40-08~~. ~~Foreign-trained applicants shall furnish to the board proof of good moral character and completion of educational and supervised fieldwork requirements substantially equal~~ equivalent to those contained in section 43-40-08 before taking the examination.

SECTION 7. AMENDMENT. Section 43-40-11 of the North Dakota Century Code is amended and reenacted as follows:

43-40-11. ~~Examination~~ Application for examination or licensure - Denial.

1. ~~Only a~~ A person satisfying the requirements of subsections 4 through 3 of section 43-40-08 may apply for examination in the manner the board prescribes. The application must be accompanied by the nonrefundable fee prescribed under section 43-40-07. ~~A person who fails an examination may apply for reexamination upon payment of the prescribed fee.~~
2. ~~Each applicant for licensure must be examined by written examination as established by the American occupational therapy association to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and such other subjects as the board may require to determine the applicant's fitness to practice.~~ The board shall approve an examination for occupational therapists and an examination for occupational therapy assistants and establish standards for acceptable performance.
3. Applicants for licensure must be examined at a time and place and under such supervision as the board may require. Examinations must be given at least twice each year at such places as the board may

determine. The board shall give reasonable public notice of the examination times and places.

4. Applicants may obtain their examination scores and may review their papers in accordance with any rules established by the board. The board shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice must state the reasons for rejection and explain the right to a hearing under chapter 28-32. A hearing must be requested within thirty days.

SECTION 8. AMENDMENT. Section 43-40-12 of the North Dakota Century Code is amended and reenacted as follows:

43-40-12. Waiver of requirements for licensure.

1. ~~The board shall grant a license to any person certified prior to July 1, 1983, as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American occupational therapy association. The board may waive the examination, education, or experience requirements and grant a license to any person certified by the American occupational therapy association after July 1, 1983, if the board determines the requirements for such certification are equivalent to the requirements for licensure in this chapter.~~
2. The board may waive the examination, education, or experience requirements and grant a license to any applicant who presents proof of current licensure or registration as an occupational therapist or occupational therapy assistant in another state which requires standards for licensure or registration considered by the board to be equivalent to the requirements for licensure of this chapter.

SECTION 9. AMENDMENT. Section 43-40-13 of the North Dakota Century Code is amended and reenacted as follows:

43-40-13. Limited permit - Expiration - Renewal.

1. The board may grant a limited permit to a person who has completed the education and experience requirements of this chapter. ~~This A limited permit allows the person to practice occupational therapy in association with~~ under supervision of a North Dakota licensed occupational therapist. This A limited permit is valid until the person is issued a license under section 43-40-14 or until the results of the examination taken by the person are available to the board and the board decides to issue or deny a license to the person.
2. The holder of a limited permit must take the next available examination. The permit expires if the holder fails to take the next available examination. This
3. A limited permit may be renewed one time if the person has failed the examination or, with good cause as determined by the board, failed to take the next examination.

SECTION 10. AMENDMENT. Section 43-40-15 of the North Dakota Century Code is amended and reenacted as follows:

43-40-15. Renewal of license.

1. Any license issued under this chapter is subject to annual renewal and expires unless renewed in the manner prescribed by the rules of the board; ~~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, but no late renewal of a license may be granted more than ~~five~~ three years after its expiration.
2. ~~Upon request, the board shall grant inactive status to a licensee who:~~
 - a. ~~Does not practice as an occupational therapist or an occupational therapy assistant;~~
 - b. ~~Does not hold oneself out as an occupational therapist or an occupational therapy assistant; and~~
 - c. ~~Maintains any continuing competency requirements established by the board.~~

The board may establish additional requirements for license renewal which provide evidence of continuing competency.

SECTION 11. AMENDMENT. Section 43-40-16 of the North Dakota Century Code is amended and reenacted as follows:

43-40-16. Suspension and revocation of license - Refusal to renew.

1. The board may deny a license, refuse to renew a license, suspend a license, ~~or~~ revoke a license; or may impose probationary conditions if the licensee or applicant for license has been found guilty of unprofessional conduct ~~which has endangered or is likely to endanger the health, welfare, or safety of the public.~~ Unprofessional conduct includes:
 - a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
 - b. Being guilty of unprofessional conduct as defined by the rules adopted by the board, or violating any code of ethics adopted by the ~~American occupational therapy association~~ board.
 - c. Being convicted of an offense, as defined by section 12.1-01-04, that the board determines has a direct bearing upon a person's ability to serve the public as an occupational therapist or an occupational therapy assistant or, following conviction of any offense, the board determines that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - d. Violating any lawful order or rule rendered or adopted by the board.
 - e. Violating this chapter or the rules promulgated by the board.
 - f. A pattern of inappropriate practice as an occupational therapist or occupational therapy assistant.

- g. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of occupational therapy.
 - h. Sexual abuse, misconduct, or exploitation related to the licensee's practice of occupational therapy.
 - i. Gross negligence in the practice of occupational therapy.
2. A ~~denial~~, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license may be ordered by the board after a hearing ~~in the manner provided by rules adopted by the board under 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 or reject an application for reinstatement, and may hold a hearing to consider such reinstatement.

SECTION 12. AMENDMENT. Section 43-40-18 of the North Dakota Century Code is amended and reenacted as follows:

43-40-18. Penalty - Injunction. Any person who violates section 43-40-02 and subsection 1 of section 43-40-16 is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter.

SECTION 13. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

Occupational therapy students - Occupational therapy aides.

1. A person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program may perform occupational therapy services if the services are a part of the student's supervised course of study, provided that the student is designated by a title that clearly indicates the student's status as a student or trainee.
2. Occupational therapy aides may assist in the practice of occupational therapy only under the direct supervision of an occupational therapist or occupational therapy assistant and in accordance with rules adopted by the board.

SECTION 14. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

Complaints - Investigations.

1. A person may file a written complaint with the board setting forth the specific charges upon which the complaint is made. Upon receiving a complaint, the board shall notify the licensee of the complaint and request a written response from the licensee. A licensee who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of records when reasonably requested by the board.

2. After review of the complaint, the licensee's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines there is a reasonable basis to believe the allegations are true and the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall notify the complaining party and the licensee in writing.

SECTION 15. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. The board may impose a fee against any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative action resulting in disciplinary action, including the cost of investigation, the amount paid for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses. When applicable, a license may be suspended until the costs are paid to the board.

SECTION 16. REPEAL. Section 43-40-09 of the North Dakota Century Code is repealed.

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