

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1087
(Industry, Business and Labor Committee)
(At the request of the State Board of Chiropractic Examiners)

AN ACT to create and enact section 43-06-16.1 of the North Dakota Century Code, relating to certified chiropractic clinical assistants; to amend and reenact subdivision hh of subsection 2 of section 12-60-24 and sections 43-06-01, 43-06-04.1, 43-06-07, 43-06-09.1, 43-06-11.1, 43-06-15, and 43-06-19 of the North Dakota Century Code, relating to chiropractic; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision hh of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- hh. The state board of chiropractic examiners for applicants, licensees, certificants, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.

SECTION 2. AMENDMENT. Section 43-06-01 of the North Dakota Century Code is amended and reenacted as follows:

43-06-01. Definitions.

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

1. "Board" means the state board of chiropractic examiners.
2. "Certified chiropractic clinical assistant" means an individual certified by the board who in accordance with section 43-06-16.1 assists with basic health care duties in the practice of chiropractic under the supervision of a licensed doctor of chiropractic in good standing with the board.
3. a. "The practice of chiropractic" includes:
 - a. (1) The examination, evaluation, and diagnosis by means including x-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor or equivalent;
 - b. (2) The treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature;
 - c. (3) The practice of physiotherapy, electrotherapy, or hydrotherapy;
 - d. (4) All other procedures taught by chiropractic colleges accredited by the council on chiropractic education or its successor; ~~and~~
 - e. (5) The rating and reporting of any permanent impairment of function and the providing of professional opinions regarding any matter included in this definition of practice of chiropractic as set out herein; and
 - (6) Delegation of basic health care duties in the practice of chiropractic to a certified chiropractic clinical assistant.

- b. The practice of chiropractic does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

SECTION 3. AMENDMENT. Section 43-06-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-06-04.1. Powers and duties of board.

1. The board shall administer the provisions of this chapter and the administrative rules of the board relating to the practice of chiropractic. It has all powers, rights, and duties as provided in chapter 28-32.
2. The board shall verify the qualifications of applicants for licenses to practice chiropractic and of applicants for certification to practice as a certified chiropractic clinical assistant. It shall examine and renew the licenses or certification of duly qualified applicants.
3. The board shall regulate the practice of chiropractic and shall enforce the provisions of this chapter and the rules of the board. The board shall investigate complaints of violations and cause the prosecution of persons violating the provisions of this chapter or the administrative rules of the board.
4. The board may appoint a peer review committee and employ such personnel and incur such expenses as may be necessary for the performance of the board's duties and the enforcement of this chapter.
5. The board may inspect upon probable cause, at all reasonable times, any chiropractic office or place where chiropractic services are performed.
6. The board may adopt and amend administrative rules, consistent with the provisions of this chapter governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter, and proper performance of its duties, including:
 - a. A code of ethical conduct governing the practice of chiropractic.
 - b. Requirements, standards, and examinations to determine the intellectual, educational, scientific, technical, and professional qualifications of applicants for license or certification.
 - c. Matters pertaining to the content and conduct of examination.
 - d. Matters pertaining to the operation and registration of chiropractic facilities.
 - e. Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic.
 - f. The quantity, type, and character of postgraduate study to be done by any licensee in order to comply with the provisions of this chapter.
 - g. Set policies and procedures on what constitutes professional or unprofessional conduct.

SECTION 4. AMENDMENT. Section 43-06-07 of the North Dakota Century Code is amended and reenacted as follows:

43-06-07. Records of the board.

1. The board shall keep a record of all its proceedings and a register of applications for licenses to practice chiropractic showing:

1. a. The name and location of the institution from which each applicant received the applicant's degree of doctor of chiropractic.
2. b. The date when the degree of doctor of chiropractic was granted.
3. c. Whether the applicant was licensed or rejected.
2. The board shall maintain a register of certified chiropractic clinical assistants. The register is prima facie evidence of all matters recorded in the register.

SECTION 5. AMENDMENT. Section 43-06-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-06-09.1. Conviction not bar to licensure or certification - Exceptions.

Conviction of an offense does not disqualify a person from licensure or certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a chiropractor or certified chiropractic clinical assistant, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 6. AMENDMENT. Section 43-06-11.1 of the North Dakota Century Code is amended and reenacted as follows:

43-06-11.1. Criminal history record checks.

The board may require any applicant or licensee, or certificate holder under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant or licensee, or certificate holder.

SECTION 7. AMENDMENT. Section 43-06-15 of the North Dakota Century Code is amended and reenacted as follows:

43-06-15. Grounds for revocation or suspension of license or other action of the board - Sworn statement - Investigation - Hearing.

1. The board may revoke, suspend, or take such other action as provided in this section regarding the license of any chiropractor in this state who:
 - a. Has a mental or physical condition such that the person is unable to safely engage in the practice of chiropractic.
 - b. Has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision.
 - c. Is suffering from alcoholism or drug addiction which endangers the public by impairing the chiropractor's ability to practice safely.
 - d. Procured the license to practice by fraud or mistake.
 - e. Has engaged in unprofessional or dishonorable conduct, including false or misleading advertising, rendering excessive or inappropriate treatment, or charging unconscionable fees.
 - f. Has been convicted of a crime involving moral turpitude, illegal possession or distribution of drugs, or any crime that would affect the person's ability to practice as a licensed

chiropractor. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence.

- g. Has aided, assisted, or enabled any unlicensed person to practice chiropractic contrary to this chapter or rule of the board.
 - h. Has engaged in the practice of abortion.
 - i. Has made use of any advertising statement of a character tending to deceive or mislead the public.
 - j. Has failed to maintain a chiropractic facility in safe and sanitary conditions.
 - k. Has incurred a suspension or revocation in another jurisdiction as a result of acts similar to acts described in this section or rule of the board. A certified copy of the suspension or revocation in the other jurisdiction is conclusive evidence.
 - l. Has committed any violation of the provisions of this chapter and the code of ethics or rules as adopted by the board, including the failure to submit for physical or mental examination or to provide information as required by the board.
 - m. Has practiced chiropractic while the license to practice was suspended or revoked.
 - n. Has, while under probation, violated its terms.
 - o. Has failed to properly supervise a certified chiropractic clinical assistant or who has delegated duties to a certified chiropractic clinical assistant which are beyond the assistant's education or training or which are beyond the scope of practice of a certified chiropractic clinical assistant.
2. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a sworn statement and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations under this chapter. The reports are not public records.
 3. Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of this chapter on behalf of the board, including members of any peer review committee, are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.
 4. A doctor of chiropractic who is the subject of an investigation by, or on behalf of, the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by, or on behalf of, the board relating to the subject of the investigation and providing copies of patient records or any pertinent information requested by the board, to assist the board in its investigation.
 5. Any person, including a member of the board, may file a signed written statement and other reports and information with any member of the board against a licensed chiropractor charging the chiropractor with any of the offenses or conditions set forth in subsection 1, which statement must set forth a specification of the charges. When the statement has been filed, the board shall make an investigation as provided by subsection 6.
 6. When the statement and other reports and information have been filed, the board shall notify the licensed chiropractor of the allegations and shall thereafter make an investigation for the purpose of determining whether the allegations in the statement constitute a basis for further proceedings. The investigation must be conducted in such manner and at such time and place as in the judgment of the board will best ascertain the facts. The board may appoint a peer review committee. The board, in order to pursue the investigation, has the power to subpoena

and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed chiropractor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and review any relevant medical or psychological records, including test results and x-rays relative to the examination or treatment of the licensed chiropractor. A written request from the board constitutes authorization to release information. The medical or psychological information is not public record.

7. If, based on the investigation or report from a peer review committee, the board has reasonable cause to believe that there is a basis for further proceedings, the board shall prepare a complaint and serve it, along with a notice of hearing, on the licensed chiropractor and thereafter proceed with a hearing on the matter under chapter 28-32. All hearings must be held in Bismarck at the state capitol unless the board and the licensed chiropractor agree otherwise.
8. After the hearing, the board, under section 28-32-39, shall make and give notice of its determination or decision as to whether the offenses charged have been committed or the conditions charged do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:
 - a. Revoke the license;
 - b. Suspend the licensee's right to practice for a period not to exceed one year;
 - c. Suspend its judgment of revocation on terms and conditions determined by the board;
 - d. Place the licensee on probation; or
 - e. Take any other disciplinary action which the board in its discretion considers proper, including the ordering of an adjustment to a patient's bill or refund of such amount previously paid, including reasonable interest from the date of the order, to a patient or payer of any unconscionable fees for chiropractic services.
 - f. In addition to the actions imposed in subdivisions a through e, the board may:
 - (1) Require payment of all costs of proceedings resulting in a disciplinary action.
 - (2) Impose a civil penalty not exceeding ten thousand dollars for each separate violation, to deprive the chiropractor of any economic advantage gained by reason of the violation found and to reimburse the board for the cost of the investigation and proceedings.
9. In cases of revocation, suspension, or probation, the board shall record the facts of the case and all actions of the board.
10. On the expiration of a term of suspension, the licensee must be reinstated by the board if the chiropractor applies to the board and furnishes evidence, satisfactory to the board, that the licensee is then of good character and conduct or restored to good health and that the licensee has not practiced chiropractic during the term of suspension and is competent to practice in this state. If the evidence fails to establish those facts to the satisfaction of the board, the board may require the applicant to submit to an examination in accordance with sections 43-06-08 through 43-06-12 or shall proceed to hearing on revocation with notice as provided in subsection 7.

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

SECTION 8. Section 43-06-16.1 of the North Dakota Century Code is created and enacted as follows:

43-06-16.1. Certified chiropractic clinical assistant.

1. A person may not practice as a certified chiropractic clinical assistant or claim to be a chiropractic assistant without certification from the board. The fee for initial certification is fifty dollars . The board may grant a temporary certification to an initial applicant who is waiting for a criminal history background check to be completed. This temporary certification expires automatically upon the applicant receiving a regular certification or being notified the application has been denied.
2. To be certified to practice as a certified chiropractic clinical assistant, an applicant must provide evidence satisfactory to the board the applicant:
 - a. Graduated from high school, or holds a graduate equivalency degree.
 - b. Is at least eighteen years of age.
 - c. Successfully completed the certified chiropractic clinical assistant program and examination by the federation of chiropractic licensing boards. However, applicants for initial certification before March 1, 2018, and who have verified employment of two thousand hours as a chiropractic assistant within the three years before August 1, 2017, and submitted evidence of passing the certified chiropractic clinical assistant examination by the national board of chiropractic examiners via the federation of chiropractic licensing boards, qualify for certification without meeting the coursework requirement of the program.
 - d. Is of good moral character and submits documentation of good moral character as prescribed by the board, including criminal records review.
 - e. Completed an application in a manner and form provided by the board.
 - f. Paid all applicable fees relative to the application process as determined by the board.
 - g. Received practical experience to the extent required to demonstrate competency to safely provide patient care pertinent to the chiropractic office at which the certified chiropractic clinical assistant is employed.
3. A certified chiropractic clinical assistant who is certified in another jurisdiction may apply for certification. The applicant shall provide evidence satisfactory to the board the applicant:
 - a. Has current practice privilege in good standing as a certified chiropractic clinical assistant or equivalent granted by at least one jurisdiction with requirements similar to or greater than the requirement of this board; and
 - b. Presented to the board current documentation that any practice privilege granted by another jurisdiction as a certified chiropractic clinical assistant or equivalent has not been suspended, revoked, or otherwise restricted for any reason except nonrenewal.
4. A minimum examination score of seventy-five percent is required to obtain certification. The examination must be provided by the national board of chiropractic examiners via the federation of chiropractic licensing boards or a board-approved examination.

5. The fee for renewal of the certification is fifty dollars per year. Certificate renewal is March first of every year.
 - a. A certified chiropractic clinical assistant shall obtain six hours of continuing education every two years to renew certification. These hours must be a program approved by providers of approved continuing education, a seminar sponsored by the North Dakota chiropractic association and approved by the board, or a seminar approved for continuing education by another state's board of chiropractic examiners or equivalent. Proof of meeting continuing education requirements must be submitted with the certified chiropractic clinical assistant's renewal application on the even-numbered years after initially receiving certification.
 - b. For an applicant who first receives initial certification between January first and March first, the certification is deemed to be automatically renewed on March first for an additional year without payment of an additional renewal fee.
6. A certified chiropractic clinical assistant must be under the direct supervision of a North Dakota licensed chiropractor in good standing with the board. Direct supervision means the oversight provided by the chiropractor over the clinical services performed by a certified chiropractic clinical assistant, and requires the chiropractor to be on the premises at all times and readily available to instruct the certified chiropractic clinical assistant throughout the performance of the clinical services.
7. The certified chiropractic clinical assistant may assist the chiropractor in patient care involving physiotherapy, electrotherapy, hydrotherapy, chiropractic rehabilitative therapy, administrative processes, and other activities as needed to assist in the practice of chiropractic. The certified chiropractic clinical assistant may perform delegated duties commensurate with the certified chiropractic clinical assistant's education and training, but may not evaluate, interpret, design, or modify established treatment programs of chiropractic care or violate any statute. Certified chiropractic clinical assistants may not participate in clinical decisionmaking, render manipulative chiropractic care, create or change the course of a chiropractic treatment plan, or represent themselves as independent health care providers. A certified chiropractic clinical assistant may not perform medical imaging unless also licensed under chapter 43-62 or upon meeting an exception from that chapter.
8. The board may deny certification of an applicant, or may revoke, suspend, or take other appropriate disciplinary or corrective action regarding the certification of any certified chiropractic clinical assistant who:
 - a. Has a mental or physical condition that renders the individual unable to safely engage in patient care.
 - b. Has been declared incompetent by a court.
 - c. Is suffering from alcoholism or drug addiction that endangers the public by impairing the certified chiropractic clinical assistant's ability to practice safely.
 - d. Procured the certification to practice by fraud or mistake.
 - e. Has engaged in unprofessional or dishonorable conduct.
 - f. Has been convicted of a crime involving moral turpitude which would affect the certified chiropractic clinical assistant's ability to safely engage in patient care.
 - g. Has aided or assisted a noncertified individual to practice as a certified chiropractic clinical assistant.
 - h. Has made advertising statements that are deceiving or misleading to the public.

- i. Has had disciplinary action taken in another jurisdiction.
 - j. Has committed any violation of regulations regarding chiropractic found in this chapter or rules adopted by the board.
 - k. Has practiced as a certified chiropractic clinical assistant while the certification was suspended or revoked.
 - l. Is found guilty of unprofessional conduct that includes:
 - (1) Willfully harassing, abusing, or intimidating a patient either physically or verbally.
 - (2) Any conduct that has endangered or is likely to endanger the health or safety of the public.
 - (3) Conviction of a crime related to the qualification of a certified chiropractic clinical assistant.
 - (4) Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
 - (5) Conviction of violating any law or regulation concerning the dispensing or administration of narcotics, dangerous drugs, or controlled substances.
 - (6) Knowingly making or signing any false certificates related to the chiropractic care administered.
 - (7) Participation in any act of fraud.
 - (8) Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
 - (9) Delegating professional responsibilities to a person that is not certified to provide the services.
 - (10) Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient even if the patient attempts to sexualize the relationship, except when the patient is the certified chiropractic clinical assistant's spouse.
9. Disciplinary procedures will be conducted in accordance with chapter 28-32, with the following provisions:
- a. Complaints must be filed and signed in written form or may be considered by the board on its own motion.
 - b. The board shall notify the certified chiropractic clinical assistant and the employer regarding any complaints filed. Full and timely cooperation is required in the investigation.
 - c. The board may appoint a peer review committee at its discretion. The peer review committee has the same authority as a peer review committee appointed under section 43-06-14.1.
 - d. If the board finds probable cause to impose disciplinary action, the board shall prepare a complaint and serve it to the certified chiropractic clinical assistant and employer.
10. Certification is not required for individuals who solely perform administrative activities of a nonclinical nature.

SECTION 9. AMENDMENT. Section 43-06-19 of the North Dakota Century Code is amended and reenacted as follows:

43-06-19. Penalty.

1. ~~Any~~ It is a class B misdemeanor for any person who fraudulently procures a license to practice chiropractic or who, without complying with the provisions of this chapter:
 1. a. Practices or attempts to practice chiropractic;
 2. b. Advertises as a chiropractor; or
 3. c. Uses the terms or letters, doctor of chiropractic, chiropractor, D.C., chiropractic physician, or any other title that will induce the belief that the person is engaged in the practice of chiropractic ~~is guilty of a class B misdemeanor,~~
2. It is an infraction for any person that fraudulently procures a certification to practice as a certified chiropractic clinical assistant or that, without complying with the provisions of this chapter:
 - a. Practices or attempts to practice as a certified chiropractic clinical assistant;
 - b. Advertises as a certified chiropractic clinical assistant; or
 - c. Uses the terms or letters certified chiropractic clinical assistant, certified chiropractic clinical assistant, or any other title that will induce the belief the person is engaged in the practice of chiropractic as a certified chiropractic assistant.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1087.

House Vote: Yeas 76 Nays 18 Absent 0

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State