

Sec. 844. IMPRESSION OF SEAL. FILING OATH AND BOND.) Each notary public before entering upon the duties of such office shall provide an official seal bearing the name of such notary and deposit an impression of the same together with oath and bond in the office of the Secretary of State.

On and after July 1, 1923, the provisions of this section, prescribing the form of seal shall also apply to notaries now commissioned.

Approved February 3rd, 1923.

OPTOMETRY

CHAPTER 261.

(H. B. No. 65—Dougherty.)

OPTOMETRY.

An Act to Amend and Re-enact Article 19 of Chapter 5 of the Political Code of the State of North Dakota being Section 524 to 539 both inclusive of the Compiled Laws of North Dakota for the year 1913, relative to the practice of optometry, creating a state board of examiners in optometry, providing for the registration of optometrists, defining and regulating the practice of optometry and providing penalties for the violation of the terms of said act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

That Sections 524 to 539 both inclusive of the Compiled Laws of the State of North Dakota for the year 1913 being article 19 of Section 5 of the Political Code be and the same are hereby amended and re-enacted as follows:

Sec. 524. PRACTICE OF OPTOMETRY DEFINED.) The practice of Optometry is defined as follows:

A. The employment of subjective and objective mechanical means to determine the accommodative and refractive states of the eye and the scope of its functions in general and the applying of lenses as correctives.

B. The examination of the human eye without the use of drugs, medicine or surgery to ascertain the presence of defects or abnormal conditions which may be corrected and remedied or relieved or the effect of which may be corrected, remedied or relieved by the use of lenses or prisms.

C. The adaptation or the adjustment of lenses or prisms and the sale thereof to the public to correct, relieve, or remedy any defect or abnormal condition or to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

Sec. 525. UNLAWFUL TO PRACTICE WITHOUT CERTIFICATE.) It shall be unlawful for any person to practice optometry in the State of North Dakota unless he shall first have obtained a certificate of registration and unless he shall have complied with the requirements of this act. Any person shall be deemed to be practicing optometry within the meaning of this act who shall display a sign or in any way advertise himself as an optometrist or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses for the aid thereof or who shall otherwise engage in the practice of optometry as defined in this article. It shall be unlawful for eye glasses, spectacles or lenses to be vended as merchandise to any one other than dealers, except from permanently located and established places of business in the State of North Dakota. Provided, however, that any optometrist registered to practice within this may fit and vend eye glasses, spectacles and lenses, at any place in this State.

Sec. 526. BOARD CREATED.) There is hereby created a board whose duties it shall be to carry out the purposes and enforce the provisions of this article and such board shall be styled "North Dakota State Board of Optometry." Said Board shall be appointed by the Governor and shall consist of five resident registered optometrists who shall have an established optometric practice in said state and who shall be members in good standing of the North Dakota Optometric Association and who shall be engaged in the actual practice of optometry in this state.

The members of said board shall be appointed by the Governor on or before July 1, 1923, or as soon thereafter as may be practicable, one for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years from July 1, 1923, who shall hold office until their successors are appointed and qualified. Thereafter one member of said board shall be appointed each year for the term of five years and shall hold office until his successor is appointed and qualified. Vacancies in such board shall be filled by like appointment for unexpired terms.

The members of said board before entering upon their duties shall respectively take and subscribe to the oath required to be taken by other state officers which oath shall be filed with the Secretary of said board.

Sec. 527. ORGANIZATION AND APPOINTMENT OF OFFICERS. MEETINGS.) Said board shall elect from among its members a President and a Secretary and may adopt a seal. Said board shall make and enforce such rules and regulations not inconsistent with law as may be necessary for the proper performance

of its duties. Any member of said board may, upon being duly designated by the board or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the board. The president and secretary shall each hold office for the term of one year and until their successors are elected and qualified. Said board shall meet at least once in each year at a place designated by the board and in addition thereto wherever and whenever the president and secretary thereof shall for proper cause call a meeting. Three members of said board in actual attendance at any meeting shall constitute a quorum and be sufficient for the transaction of any business. The president of said board, or, in his absence, some other member selected by the board, shall act as Chairman and preside at all meetings of said board and shall sign on behalf of the members all certificates or other instruments as provided herein, which certificates or instruments shall be attested by the secretary. The secretary of said board shall keep a full record of the proceedings of said board which record shall, at all reasonable times, be open to public inspection. Such record shall also contain, under permanent binding, a registry list of all persons registered by said board together with renewals and revocations of licenses or certificates, which record shall constitute the official registry of all persons licensed to practice optometry in this state. A true copy of all records of said Board or any part thereof shall be admissible in evidence without further proof of authenticity when accompanied by the Certificate of the secretary of said board that the same is a true copy of the original record on file in his office as secretary of said board.

Sec. 528. EXAMINATIONS.) Every person before beginning to practice optometry in this state, shall pass an examination before said State board of optometry. Such examination may be conducted by two or more members of the board at such times and places as may be prescribed by said board. Any person desiring to take such examination shall, at least, five days before the date of such examination, file with the secretary of said board, a written application for such examination which shall be accompanied by the affidavits of two freeholders of this state to the effect that the person is of good moral character and a resident of this state. Such person shall also furnish satisfactory proof:

- A. That he is of the age of at least 21 years.
- B. That he has attended a high school for four years or has the equivalent of such an education.
- C. That he is a graduate of an optometry school or college of good standing, requiring an attendance of not less than two thousand hours or two years' course or that he has the equivalent of such an education.

Before beginning such examination, the applicant shall pay to the secretary of said board for the use of said board, the sum of twenty dollars and if he shall successfully pass such examination shall pay to the secretary, for the use of the said board, the additional sum of five dollars on the issuance to him of a certificate. All persons successfully passing such examination shall be registered in the board registry, which shall be kept by said secretary, as licensed to practice optometry and shall receive a certificate of such registration, to be signed by the president and secretary of said board. In the event of failure on the part of the candidate to pass the first examination, he may, within fourteen months thereafter, have another examination upon the payment of five dollars additional, which examination shall be given at such time and place as may be designated by the board. Any applicant may be registered and given a certificate of registration if he shall present a certified copy or an original certificate of registration or license issued to said applicant by any other state where the requirements for registration shall be equivalent to those provided by the laws of this state. The board may give a practical examination of said applicant if deemed necessary, provided that such state shall accord a like privilege to holders of certificates issued under the laws of this State. The fee for issuing certificates to such applicants shall be twenty-five dollars.

Sec. 529. WHO EXEMPT FROM PROVISIONS OF SECTION 528.) Every person who is a resident and engaged in the practice of optometry in the State of North Dakota at the time of the taking effect of this Act and who has received a certificate of registration entitling him to practice optometry under the existing laws of this state, shall be exempt from the provisions of Section 528.

Sec. 530. COMPENSATION AND EXPENSES.) Out of the fees coming into the possession of said board, each member thereof shall receive as compensation, the sum of five dollars for each day actually engaged in the duties of his office and mileage at the rate of five cents per mile for all distances necessarily traveled in going to and from the meetings of said board and an additional allowance for other necessary expense in attending said meeting, not to exceed five dollars per day. Said expense shall be paid from the fees received by the board under the provisions of this article but that no part thereof shall ever be paid out of the state treasury nor shall the State of North Dakota be obligated for the payment thereof.

Sec. 531. EXPENSE OF SECRETARY.) Out of the fees coming into the possession of said board, the secretary shall receive for clerical expenses and services such compensation and allowance as the board may deem just and proper, not to exceed seventy-

five cents for each certificate or license issued or renewed as provided herein.

Sec. 532. DUTIES OF SECRETARY.) The secretary shall be the custodian of all fees coming into the possession of said board and shall give a bond or surety for the faithful discharge of his duties in such amount and under such conditions as may be prescribed by said board and shall at such times as may be required by said board, furnish a complete statement of receipts and disbursements under oath, together with vouchers, receipts and other evidence of such receipts and disbursements as may be required by said board.

Sec. 533. CERTIFICATE TO BE DISPLAYED.) Every person to whom a certificate of examination or registration is issued shall display the same in a conspicuous place in his office where the practice of optometry is conducted.

Sec. 534. REPORT TO GOVERNOR.) The State Board shall make an annual report of its proceedings to the Governor on the first day of December of each year, which report shall contain an account of all monies received and disbursed pursuant to this article and such other information as may be necessary to disclose the general proceedings of said board in carrying out the purposes and enforcing the provisions of this act during the period covered by said report.

Sec. 535. RENEWAL OF CERTIFICATES.) Every person authorized to practice optometry under existing laws and under the provisions of this Act shall annually hereafter, during the month of January of each year, pay to the secretary of said board of optometry, the sum of five dollars as a license fee for the succeeding year. Failure by any person to pay the annual license fee as provided herein, shall constitute a revocation of his certificate of registration, which revocation shall be effective from and after February first of the year in which such annual license fee becomes due and payable. But such license or certificate of registration may be reinstated by said board upon the payment by the person in default as aforesaid of an additional sum of three dollars and upon the performance of such other reasonable conditions as said board may impose.

Sec. 536. CERTIFICATE REVOKED, WHEN.) Said board shall have power and must revoke any certificate of registration granted by it under this article or under existing laws, where it appears to the satisfaction of the majority of said board, that the holder of said certificate is guilty of any one or more of the following:

A. Conviction of crime, or violation of any provision of this article.

B. Habitual drunkenness.

C. The excessive use of intoxicating liquor or narcotic drugs for at least six months immediately prior to the filing of the charges as provided herein.

D. That such person is permanently afflicted with any contagious or infectious disease.

E. That such person is grossly incompetent to discharge his duties in connection with the practice of optometry as defined in this article.

F. That said person in the practice of optometry has been guilty of fraud, deceit or misrepresentations.

Provided, that before any certificate shall be so revoked, the holder thereof, shall have notice through registered mail from the secretary of said board requiring him to appear before said board at the time and place designated in said notice, which shall be at least ten days subsequent to the date of mailing said notice to appear before said board to answer to said charge or charges. A copy of such charge or charges shall be attached to and served upon said person as a part of said notice. At the time and place fixed for hearing of said charges, the board or a majority of the members thereof shall require the secretary to read said charges to the accused, if he be present, and shall require the accused to state whether he is guilty or not guilty of said charges. If the accused shall deny said charges, evidence shall then be received by said board under oath by competent witnesses as to the truth of said charges and the accused shall be entitled to examine said witnesses by himself or by his attorney and shall have an opportunity to produce evidence in his own behalf. At the conclusion of said hearing, the said board or the majority thereof, shall review the evidence and enter upon the records of said board a determination as to whether the accused is guilty of one or more of the charges made against him.

And if he be found guilty such determination as so recorded, shall constitute a revocation of his certificate or license. If the accused fails to appear at said hearing or if he pleads guilty of one or more of the charges aforesaid, said board, or the majority thereof, shall cause the secretary to enter the record thereof upon the record of said board which shall constitute a determination of guilt and the revocation of the license of said accused in like manner.

The witnesses at all hearings before the board shall testify under oath and for that purpose may be sworn by any member of the board. The board shall have power to compel the attendance of witnesses from any point within the state and the production of testimony at any such hearings and may employ an attorney to represent the board at such hearings. The expenses of conducting such hearings, including witness fees and

other necessary costs, disbursements and expenses, shall be paid by the secretary on order of the board or of the majority thereof, out of the funds in the custody of said board. Provided, however, that upon the revocation of any certificate, the holder thereof may, within thirty days, appeal said matter to the District Court in which the practitioner resides, in the same manner as is now provided or may be provided on appeals from justice courts and such laws are herein made applicable.

The Secretary of said board shall send the files and a copy of the minutes of the proceedings of said board in said matter to the Clerk of the District Court of the County in which the appeal is taken, and such minutes and files shall constitute the minutes of said appeal.

Upon the trial of said proceeding in District Court upon said appeal, all issues of law and fact shall be tried anew without reference to the determination of said board in revocation of said license according to the ordinary rules of evidence applicable to civil actions. Any person whose certificate has been revoked may have the same re-granted upon satisfactory proof that the disqualification has ceased or his disability has been removed.

Sec. 537. PENALTY.) Any person who shall violate any provision of this article, shall be deemed guilty of a misdemeanor and may be fined not less than fifty dollars, nor more than one hundred dollars, or be confined in the County Jail, not less than one month nor more than three months or by both said fine and imprisonment.

Sec. 538. JUSTICES OF THE PEACE TO HAVE JURISDICTION.) Justices of the Peace shall have jurisdiction of the violation of this article. It shall be the duty of the respective States Attorneys to prosecute all violations of this article. Said prosecution shall be commenced in the county where defendant resides. If the defendant be not a resident of the State of North Dakota, such prosecution may be commenced in any county of this state.

Sec. 539. WHO EXEMPT. REPEAL OF CONFLICTING LAWS.) Nothing in this article shall be construed to apply to persons who sell spectacles or eye glasses or any other article of merchandise without attempting to practice optometry as is in this article defined nor to student practitioners under the immediate and direct supervision of a registered optometrist, nor to require physicians and surgeons authorized to practice medicine under the Laws of this State to be registered under the provisions of this article.

If for any reason any part or parts of this act shall be held unconstitutional or invalid, the same shall not be held to

affect the remainder of said act but the same shall receive a liberal interpretation with the view of carrying out the purposes hereof.

All acts or parts of acts in conflict with the provisions of this article are hereby expressly repealed.

Approved February 27th, 1923.

PARDON AND PAROLE

CHAPTER 262.

(S. B. No. 396—Baird.)

INDETERMINATE SENTENCES.

An Act to Amend and Re-enact Sections 10943 and 10944 of the Compiled Laws of North Dakota for the year 1913, and Section 10948 of the Compiled Laws of North Dakota for the year 1913 as Amended by Chapter 233 of the Session Laws of North Dakota for the year 1915, Relating to Indeterminate Sentences of Persons Convicted of Certain Crimes, and the Discharge or Paroling of Prisoners Serving Indeterminate Sentences, Abolishing the Board of Experts, and Repealing all Acts in Conflict Therewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Sec. 1. AMENDMENT.) Section 10943 of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

Sec. 10943. TERM OF IMPRISONMENT IN THE PENITENTIARY.) In all cases where a person is convicted of a felony other than treason, murder in the first degree, kidnapping, or rape by force, the court imposing the sentence may, in its discretion, refrain from imposing sentence for a definite term and impose an indeterminate sentence. In all cases where an indeterminate sentence is imposed, the court imposing the sentence shall adjudge that the person so sentenced be imprisoned for not less than a stated minimum nor more than a stated maximum period of time; provided, that in all cases the minimum period shall not be less than the minimum term nor shall the maximum be more than the maximum term provided by law for the offense committed at the time of the commission of such offense.

Sec. 2. AMENDMENT.) Section 10944 of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows: