

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 450

HOUSE BILL NO. 1479  
 (Representatives Rydell, Jensen, Kroeber)  
 (Senators Maxson, Lips, Kelly)

### BOARD OF PODIATRIC MEDICINE

AN ACT to create and enact six new sections to chapter 43-05 of the North Dakota Century Code, relating to the board of podiatric medicine; to amend and reenact sections 43-05-01, 43-05-03, 43-05-04, 43-05-05, 43-05-06, 43-05-09, 43-05-10, 43-05-11, 43-05-12, 43-05-13, 43-05-14, 43-05-15, 43-05-16, and 43-05-17 of the North Dakota Century Code, relating to regulation of the practice of podiatric medicine; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-01 of the North Dakota Century Code is amended and reenacted as follows:

43-05-01. Definitions. For the purposes of In this chapter, unless the context or subject matter otherwise requires:

1. "Podiatrist" shall mean one who examines, diagnoses, and treats ailments of the human foot by medical, surgical, and other means, except amputation of the foot, which can be done with or without a local anesthetic. When general anesthesia is utilized, it must be under the direction of a licensed anesthesiologist.
- 2- "Board" shall mean means the North Dakota board of registry in podiatry podiatric medicine.
2. "Clinical residency" means a formal, structured postdoctoral training program approved by the board which is sponsored by and conducted in an accredited institution approved by the board or conducted by a college of podiatric medicine accredited and approved by the council on podiatric medical education, American podiatric medical association, or other accrediting agency approved by the board. The term also includes a preceptorship approved by the board until January 1, 1995.
3. "False or misleading statement or advertising" includes a statement, claim, or advertising that:
  - a. Contains a misrepresentation of fact;
  - b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
  - c. Is intended or is likely to create false or unjustified expectations of favorable results;

- d. Appeals to an individual's anxiety in an excessive or unfair way;
  - e. Contains material claims of superiority that cannot be substantiated;
  - f. Misrepresents a podiatrist's credentials, training, experience, or ability;
  - g. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived; or
  - h. Represents that a manifestly incurable condition, sickness, disease, or injury can be cured.
4. "Health care facility" means a medical hospital, skilled nursing care facility, intermediate care facility, basic care facility, boarding house, or swing-bed hospital approved to furnish long-term care service, or any other facility licensed to provide health care services.
5. "Podiatric medicine" means the profession of the health services concerned with the diagnosis and treatment of conditions affecting the human foot and ankle including local manifestations of systemic conditions by all appropriate systems and means and includes the prescribing or administering of drugs or medications necessary or helpful to that profession.
6. "Podiatrist" means a person who is qualified to practice podiatric medicine in this state.
7. "Preceptorship" means a formal, structured postdoctoral training program approved by the board and conducted by a podiatrist primarily in an office setting and controlled and supervised by a college of podiatric medicine accredited by the council on podiatric medical education, American podiatric medical association, or another accrediting agency approved by the board.
8. "Provider" means a licensed person, homecare provider, medical or health services clinic, hospital, or health care facility, organization, institution, or agency that furnishes health care services.

SECTION 2. AMENDMENT. Section 43-05-03 of the North Dakota Century Code is amended and reenacted as follows:

43-05-03. Board of ~~registry in podiatry~~ podiatric medicine - Appointment of members - Term of office - Qualifications - Vacancies - Duties - Quorum - Records. The board of ~~registry in podiatry shall consist of four~~ podiatric medicine consists of five persons appointed by the governor for a term of four years each with the terms of office so arranged that one term only ~~shall expire~~ expires on the thirteenth day of June of each year. ~~Three~~ Four members of the board ~~shall~~ must hold doctor of podiatric medicine degrees and ~~shall~~ must have practiced ~~podiatry~~ podiatric medicine in this state for at least two years ~~prior to~~ before their appointment, and the ~~fourth~~ fifth person ~~shall~~ must be a doctor of medicine, who ~~shall hold~~ holds

a doctor of medicine degree and ~~shall have~~ has practiced in this state for at least two years ~~prior to his~~ before the appointment.

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold ~~his~~ office until ~~his~~ a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

A majority of the board constitutes a quorum to transact business, make any determination, or take any action. The board shall keep a record of its proceedings and of applications for licenses. Applications and records must be preserved for at least six years beyond the disposition of the application or record or the last annual registration of the licensee, whichever is longer.

SECTION 3. AMENDMENT. Section 43-05-04 of the North Dakota Century Code is amended and reenacted as follows:

43-05-04. Meetings - When held - Officers. The board shall hold an annual meeting and at ~~such~~ that meeting shall elect from its members a president, vice president, and secretary-treasurer. The president of the board or any two members of the board may call a special meeting at any time if written notice of the meeting is given to all the members. At any special meeting at which ~~all members are in attendance~~ a quorum is present a waiver of the notice of the meeting may be executed in lieu of the original notice. The officers shall perform such duties as the board prescribes. If a member of the board is absent from two consecutive regular or special meetings, the board may declare that member's position to be vacant. The governor shall fill all vacancies.

SECTION 4. AMENDMENT. Section 43-05-05 of the North Dakota Century Code is amended and reenacted as follows:

43-05-05. Secretary-treasurer - Bond - Allowance. The secretary-treasurer of the board ~~shall~~ must be bonded for the faithful discharge of ~~his~~ the duties of the office in the ~~penal~~ sum of not less than one thousand dollars. The secretary of the board shall receive such allowance for clerical and other expenses of the board as determined by the board.

SECTION 5. AMENDMENT. Section 43-05-06 of the North Dakota Century Code is amended and reenacted as follows:

43-05-06. Compensation of members of board. Each member of the board shall receive ~~ten fifty~~ dollars per day for each day employed in the actual discharge of ~~his~~ the duties of the board, and ~~his~~ the member's necessary expenses incurred in connection therewith. The mileage and travel expense allowed ~~shall~~ may not exceed the amount provided for in section 54-06-09.

SECTION 6. AMENDMENT. Section 43-05-09 of the North Dakota Century Code is amended and reenacted as follows:

43-05-09. License to practice podiatry required.

1. No A person in this state shall may not practice podiatry nor hold himself out to be a podiatrist, nor assume nor attempt to act as a

podiatrist, podiatric medicine unless he that person first has obtained a license or permit to do so.

2. A person may not do any of the following unless that person holds a valid license or permit:
  - a. Advertise, hold out to the public, or represent in any manner that that person is authorized to practice podiatric medicine.
  - b. Use the designation "doctor of podiatric medicine", "podiatrist", "D.P.M.", "podiatric physician", "chiroprapist", "foot specialist", or "foot doctor", or use any title, degree, letters, symbol, or words that would tend to lead the public to believe that that person is authorized to practice or assume duties incident to the practice of podiatric medicine.
3. A license to practice podiatric medicine is effective for one year subject to the terms and conditions for renewal established by the board.

SECTION 7. AMENDMENT. Section 43-05-10 of the North Dakota Century Code is amended and reenacted as follows:

43-05-10. Application - Examination fee. In order to To obtain a license to practice as a doctor of podiatric medicine, a person must submit an application shall be made and any other documentation required by the board to the board through the secretary treasurer in the manner prescribed by the board. The applicant shall submit evidence that he the applicant has the required qualifications and shall pay to the secretary treasurer board a fee of one hundred fifty not more than five hundred dollars. The application shall be filed on or before the first day of June.

SECTION 8. AMENDMENT. Section 43-05-11 of the North Dakota Century Code is amended and reenacted as follows:

43-05-11. Qualifications of licensee. An applicant for a license to practice podiatry shall podiatric medicine must possess the following qualifications:

1. Be at least eighteen years of age;
2. Be of good moral character;
3. Be a graduate of a college of podiatric medicine satisfactory to the board podiatric medical school approved by the board based upon its faculty, curriculum, facilities, accreditation by a recognized national accrediting organization approved by the board, and other relevant factors.

All persons holding a license to practice podiatry podiatric medicine in this state upon on July 1, +975 1991, shall continue to be eligible for a license to practice podiatry podiatric medicine under this chapter.

Upon renewal of any license, the podiatry board shall have the power to may require the applicant to show sufficient proof of continuing medical education since the last application, which may include seminars or podiatry meetings. The podiatry board shall have the discretion to may waive said the

continuing education requirements in case of illness or other extenuating circumstances.

An applicant for a license must not have engaged in conduct warranting disciplinary action against a licensee or permittee in this state or another state. The board may issue a license or permit to an applicant who has engaged in conduct warranting disciplinary action if the board determines that the public will be protected through the issuance of a license or permit with conditions and limitations considered appropriate by the board. Applicants graduating after the effective date of this Act from a podiatric medical school shall present to the board evidence of the successful completion of a program of clinical residency.

SECTION 9. AMENDMENT. Section 43-05-12 of the North Dakota Century Code is amended and reenacted as follows:

43-05-12. Examination - ~~Subjects covered~~ - ~~Mark required~~ - ~~When given Temporary permit.~~ Before an applicant may be licensed as a doctor of podiatry, he shall pass satisfactorily an examination in the following subjects, limited in their scope to the treatment of the human foot:

1. ~~Basic sciences.~~
2. ~~Physical diagnosis.~~
3. ~~Orthopedics.~~
4. ~~Materia medica.~~
5. ~~Emergencies.~~
6. ~~Foot surgery.~~
7. ~~Any other subjects as may be required by the board.~~

The minimum requirement for the license shall be a general average of seventy five percent. Regular examinations shall be given at such time as the board may designate. If an applicant shall pass the examination given under this chapter, he shall be entitled to a license. In lieu of the examination herein provided for, the board may accept the successful completion of the examination administered by the National Board of Podiatry Examiners as meeting the aforesaid requirements.

1. The board may issue a license or permit to an applicant who has received a passing score on each section of the national board of podiatric medical examiners licensing examination or such other licensing examination as determined by the board. The board shall determine the requirements for a passing score. An applicant shall appear in person before the board or its designated representative to complete an oral practical examination and show that the applicant satisfies the requirements for licensure. The board may accept a national clinical examination prepared and graded by the national board of podiatric medical examiners in lieu of the oral practical examination. The board may establish the procedures or requirements for the applicant's personal presentation and the subject matter of the oral practical examination.

2. The board may issue a temporary permit to practice podiatric medicine to a person engaged in a clinical residency or preceptorship for a period not to exceed twelve months if the person meets all the conditions and qualifications for licensure established by this chapter and rules of the board. The applicant for a temporary permit must submit a fee of not more than two hundred fifty dollars, as determined by the board.

SECTION 10. AMENDMENT. Section 43-05-13 of the North Dakota Century Code is amended and reenacted as follows:

43-05-13. Reexamination when applicant fails in first examination. Any applicant who fails ~~in~~ the examination and is refused a license, within one year after such refusal, may be reexamined upon paying an additional fee of ~~ten~~ three hundred dollars. Only one ~~such~~ reexamination ~~shall exhaust~~ exhausts the applicant's privilege under the original application.

SECTION 11. AMENDMENT. Section 43-05-14 of the North Dakota Century Code is amended and reenacted as follows:

43-05-14. When license issued without examination. The board may issue a license without examination to a podiatrist of another state or Canadian province if:

1. ~~Such~~ The other state or Canadian province grants like privileges to podiatrists of this state;
2. ~~Such~~ The other state or Canadian province maintains equal statutory requirements for practicing ~~podiatry~~ podiatric medicine;
3. ~~Such~~ The applicant pays a fee of ~~seventy-five~~ not more than five hundred dollars as determined by the board;
4. ~~Such~~ The applicant has been engaged legally in the active practice of ~~podiatry~~ podiatric medicine for at least two years immediately preceding the date of ~~his~~ application;
5. The applicant presents satisfactory evidence to the board indicating the current status of a license to practice podiatric medicine which has been issued by the proper agency in another state or Canadian province;
6. The applicant has not had a license suspended or revoked, or has not engaged in conduct warranting or which would have warranted disciplinary action against a licensee if the conduct was committed in this state or elsewhere, or has not been subjected to disciplinary action in another state or Canadian province. If an applicant does not satisfy the requirements of this subsection, the board shall refuse to issue a license unless the board determines that the public will be protected through issuance of a license with conditions or limitations considered appropriate by the board; and
7. The applicant submits with the application the following information for the five-year period before the date of filing the application:

- a. The name and address of the applicant's professional liability insurance carrier in the other state or Canadian province; and
- b. The number, date, and disposition of any podiatric medical malpractice settlement or award made to the plaintiff relating to the quality of podiatric medical treatment.

SECTION 12. AMENDMENT. Section 43-05-15 of the North Dakota Century Code is amended and reenacted as follows:

43-05-15. Renewal of license - Fee - Established by board - Failure to pay - Reinstatement. Each licensed and practicing podiatrist in this state shall pay ~~an~~ the annual renewal ~~uniform~~ license fee to be established by the board, ~~which~~. The license fee may be increased in accordance with the number of years licensed and practicing in North Dakota, but may not to exceed one hundred fifty five hundred dollars. The fee must be paid on or before the first day of June of each year and shall be the renewal date established by the board. The person is entitled to an annual certificate or license upon payment of ~~said~~ the fee. If the renewal fee is not paid within six months after June first of each year the date established by the board, the license of the delinquent licensee ~~shall~~ must be revoked and ~~shall~~ may not be reissued except upon a new application and the payment of a sum equal to such the renewal fee as established by the board plus twenty-five dollars and the costs of any hearing held concerning revocation of a license for nonpayment.

SECTION 13. AMENDMENT. Section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

43-05-16. Grounds for ~~revoking or refusing to grant license disciplinary action~~. After notice and due hearing the board may refuse to renew a license to practice podiatry or may revoke an existing license for any one or more of the following causes:

- 1- ~~Prescribing for or treating any disease or defect of any part of the human body which in the opinion of the board is outside the scope of the practice of podiatry.~~
- 2- ~~The use of untruthful or improbable statements to patients or in his advertisements.~~
- 3- ~~The willful betrayal of professional secrets of a patient.~~
- 4- ~~False statement of an applicant in an application for a license or an affidavit connected with an application.~~
- 5- ~~Conviction of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as a podiatrist, or the board determines that the holder, following his conviction of any offense, is not sufficiently rehabilitated under section 12-1-33-02.1.~~
- 6- ~~Proof of the use by the applicant or licensee of morphine, opium, cocaine, or any other substance or drug having a similar effect.~~
- 7- ~~Giving away or prescribing any substance or compound containing morphine, opium, cocaine, or similar drug; exchanging the same for~~

money or its equivalent; or vending or bartering the same for other than legal and legitimate therapeutic purposes.

It shall be unlawful for any person licensed under this chapter to maintain his or her professional office in conjunction or relation with any business other than those engaged in the practice of the medical sciences. The board of registry in podiatry may revoke the license of anyone violating this provision.

1. The board may refuse to grant a license or permit or may impose disciplinary action as described in this chapter against any podiatrist. The following conduct, whether occurring in this state or elsewhere, is prohibited and is a basis for disciplinary action:
  - a. Failure to demonstrate the qualification or satisfy the requirements for a license or permit under this chapter or rules of the board.
  - b. Obtaining a license or permit by fraud or cheating or attempting to subvert the licensing or permit examination process, 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 license or permit requirements.
  - c. Conviction, during the previous five years, of a misdemeanor or felony reasonably related to the practice of podiatric medicine, or determined by the board to have a direct bearing upon a person's ability to serve the public as a podiatrist. A license may not be withheld contrary to chapter 12.1-33.
  - d. Revocation, suspension, restriction, limitation, or other disciplinary action against the person's podiatric medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or failure to report to the board that the person has been refused a license by another state or jurisdiction.
  - e. Advertising that is false or misleading, or the making of any false or misleading statement about the podiatrist's skill, training, experience, or ability or the efficacy of any treatment or remedy.
  - f. Violating a rule adopted by the board; an order of the board; any provision of this chapter; any action, stipulation, condition or agreement imposed by the board; a state or federal law that relates to the practice of podiatric medicine; or a state or federal narcotics or controlled substance law.
  - g. Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm the public; demonstrating a willful, careless, or negligent disregard for the health, welfare, or safety of a patient; or podiatric medical practice that is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety regardless of whether an actual injury is proved.

- h. Failure to supervise a preceptor or resident;
- i. Aiding or abetting an unlicensed, incompetent, or impaired person in the practice of podiatric medicine.
- j. Adjudication by a court of competent jurisdiction as mentally incompetent, mentally ill, chemically dependent, a person dangerous to the public, or a person who has a psychopathic personality.
- k. Engaging in unprofessional conduct that includes any departure from or the failure to conform to the minimal standards of acceptable and prevailing podiatric medical practice.
- l. Inability to practice podiatric medicine with reasonable skill and safety to patients because of physical or mental illness, chemical dependency, or as a result of any mental or physical condition or disability.
- m. Revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law.
- n. Improper management of medical records.
- o. Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or the payment or receipt, directly or indirectly, of any fee, commission, rebate or other compensation for services not actually or personally rendered.
- p. Engaging in abusive or fraudulent billing practices.
- q. Habitual use of, or becoming addicted or habituated to, alcohol or drugs.
- r. Prescribing, administering, or distributing a drug for other than medically accepted therapeutic purposes, experimental, or investigative purposes authorized by a state or federal agency.
- s. Engaging in sexual misconduct, sexual abuse, or exploitation with or of a patient; conduct that may reasonably be interpreted by the patient as sexual; or in verbal behavior which is seductive or sexually demeaning to a patient.
- t. The failure to furnish the board or representatives information legally requested by the board.
- u. A continued pattern of inappropriate care as a podiatrist.
- v. The practice of podiatric medicine under a false or assumed name other than a partnership name containing the names of one or more of the licensed partners.
- w. Maintaining a professional office in conjunction or relation with any business not engaged in the practice of the medical sciences.

- x. Treating any disease, sickness, illness, malady, or defect that is outside the scope of the practice of podiatric medicine.
- 2. In disciplinary actions alleging a violation of subdivision c or d of subsection 1, a copy of the judgment or proceeding under the seal of the clerk of court or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of the contents of that judgment or proceeding.
- 3. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses or permits together with the evidence offered.

SECTION 14. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Forms of disciplinary action - Dates - Automatic suspensions - Reissuance.

- 1. When the board finds, pursuant to chapter 28-32, that a podiatrist has violated this chapter or a rule of the board, the board may do one or more of the following:
  - a. Revoke the license or permit.
  - b. Suspend the license or permit.
  - c. Institute probation with or without any of the following terms:
    - (1) Impose limitations or conditions on the podiatrist's practice of podiatric medicine;
    - (2) Impose retraining or rehabilitation requirements;
    - (3) Require practice under supervision;
    - (4) Condition the continued practice on demonstration of knowledge or skills by an appropriate examination or other review of skill and competence.
  - d. Impose a civil penalty not exceeding ten thousand dollars for each violation, the amount of the civil penalty fixed so as to deprive the podiatrist of any economic advantage gained by the violation or to reimburse the board for the cost of the investigation and proceeding.
  - e. Order the podiatrist to provide unremunerated professional service under supervision at a designated public hospital, nursing home, clinic, or other health care facility or institution.
  - f. Reprimand the podiatrist.
  - g. Censure the podiatrist.
  - h. Send the podiatrist a letter of concern.

SECTION 15. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Suspension or revocation of license.

1. In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the license or permit of a podiatrist if the board finds as a matter of probable cause based on verified evidence that the podiatrist has violated this chapter or a rule of the board and that continued practice by the podiatrist would create or be likely to result in a serious and imminent risk of harm to the public. The ex parte temporary suspension order is effective upon written notice to the podiatrist, specifying the law or rule violated. The ex parte temporary suspension remains in effect until the board issues a final order in the matter after a hearing unless otherwise ordered by a district court. When the board issues the ex parte temporary suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to chapter 28-32. The hearing must be scheduled to begin no later than sixty days after the issuance of the ex parte temporary suspension. Within three days after the issuance of the ex parte suspension order, the board shall serve the podiatrist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing. The podiatrist may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of this appeal, the district court shall decide whether probable cause reasonably requires the temporary suspension to adequately protect the public interests. The court shall give priority to the appeal for prompt disposition thereof. Unless ordered by the district court, an appeal by the podiatrist of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary suspension.
2. A suspension, revocation, condition, limitation, qualification, or restriction of a license or permit is in effect pending determination of an appeal unless the court, upon petition and for good cause shown, otherwise orders.
3. A license or permit to practice podiatric medicine is automatically suspended if a guardian of the person of a licensee or permittee is appointed by order of a court under chapter 30.1-28 or other similar provisions in this state or elsewhere for reasons other than the minority of the licensee or permittee, or the licensee or permittee is committed by order of a court under chapter 25-03.1 or other similar provisions of law in this state or elsewhere. The license or permit remains suspended until the licensee or permittee is restored to capacity by a court and, upon petition by the licensee or permittee, the suspension is terminated by the board after a hearing.
4. The board may restore and reissue a license or permit to practice podiatric medicine and may impose as a condition of the license or permit any disciplinary or corrective measure.
5. The board may revoke the license of any podiatrist who fails to renew a license. A revocation may occur after six months from the date when all renewal fees and other conditions must be paid or

completed and be in effect before any hearing upon written notice to the podiatrist of the revocation. A hearing must be held within sixty days of the service of the notice of revocation upon the podiatrist.

SECTION 16. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Podiatrist cooperation. A podiatrist or applicant for license under this chapter who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by the board relating to the subject of the investigation and providing copies of patient medical records or other documentation to assist the board in its investigation. The board shall pay for the copies requested. If the board does not have written consent from a patient permitting access to the patient's records, the podiatrist or applicant for license shall delete any data in the record that identifies the patient before providing the record to the board.

SECTION 17. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Mental examination - Access to medical data.

1. If the board has probable cause to believe that a podiatrist or applicant for license falls within the provisions of subdivisions l or q of subsection 1 of section 43-05-16, it may direct the podiatrist or applicant for license to submit to a mental or physical examination or chemical dependency evaluation. A podiatrist licensed or permitted under this chapter or an applicant for a license is considered to have consented to submit to a mental or physical examination or chemical dependency examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the examination constitutes a privileged communication. The failure of a podiatrist or applicant for a license to submit to an examination when directed constitutes an admission of the allegations against the podiatrist or applicant for license and a default and final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond the podiatrist's or applicant's control. A podiatrist or applicant for a license must, at reasonable intervals, be given an opportunity to demonstrate that the podiatrist or applicant can resume or commence the competent practice of podiatric medicine with reasonable skill and safety to patients. In a proceeding under this subsection, neither the record of proceedings nor the orders entered by the board may be used against a podiatrist or applicant in any other proceeding.
2. In addition to ordering a physical or mental examination or a chemical dependency evaluation, the board may, notwithstanding any law to the contrary, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that the podiatrist or applicant falls within the provisions of subdivisions l or q of subsection 1 of section 43-05-16. The medical data may be requested from a provider, an insurance

company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section unless the information is false and the provider giving the information knew or had reason to believe the information was false.

SECTION 18. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Reporting obligations.

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter may report the violation to the board.
2. A hospital, clinic, or other health care institution, facility, organization shall report to the board any action taken by the hospital, clinic, or other health care facility, institution, or organization to revoke, suspend, restrict, or condition a podiatrist's privilege to practice or treat patients in the hospital, clinic, or other health care facility or institution, or as part of the organization, any denial of privileges or any other disciplinary action. The hospital, clinic or other health care facility, institution, or organization shall also report the resignation of any podiatrist before the conclusion of any disciplinary proceeding, or before the commencement of formal charges but after the podiatrist had knowledge that formal charges were contemplated or in preparation. No report is required of a podiatrist voluntarily limiting practice at a hospital if the podiatrist notifies all hospitals at which the podiatrist has privileges of the voluntary limitation and the reasons for it.
3. Four times a year, as prescribed by the board, each insurer providing professional liability insurance to podiatrists shall submit to the board a report concerning any podiatrist against whom podiatric medical malpractice settlements or awards have been made. The report must contain at least the following information:
  - a. The total number of podiatric malpractice settlements or awards made to the plaintiff.
  - b. The date the podiatric malpractice settlements or awards to the plaintiff were made.
  - c. The allegations contained in the claim or complaint leading to the settlements or awards made to the plaintiff.
  - d. The dollar amount of each podiatric malpractice settlement or award.
  - e. The regular address of the practice of the podiatrist against whom an award was made or with whom a settlement was made.
  - f. The name of the podiatrist against whom an award was made or with whom a settlement was made.

In addition, the insurance company shall report to the board any information it has that tends to substantiate a charge that a podiatrist may have engaged in conduct prohibited under this chapter.

4. The clerks of court of the district courts or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that a podiatrist is mentally ill; mentally incompetent; chemically dependent; guilty of a felony; guilty of a violation of federal or state narcotics laws or controlled substances acts; guilty of an abuse or fraud under medicare, medicaid, or medical assistance laws or rules; appoints a guardian of the podiatrist; or provides for the civil commitment of a podiatrist.
5. Reports required by this section must be submitted no later than thirty days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

SECTION 19. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Board immunity and privileged communications.

1. No member of the board, its committees, its employees, or its staff is liable for civil damages or subject to criminal prosecution for any action undertaken or performed within the scope of the functions of the board when acting without malice or gross negligence and in the reasonable belief the action was warranted.
2. Every communication, oral or written, made by or on behalf of any person, institution, agency, or organization to the board or to any person designated by the board to investigate or otherwise hear matters relating to any disciplinary action, is privileged. No action or proceeding, civil or criminal, is permitted against any person, institution, agency, or organization for submitting a report to the board under section 18 of this Act. For any report or communication not required by section 18 of this Act, no action or proceeding, civil or criminal, is permitted against a person, institution, agency, or organization, except upon proof that the communication or report was made with malice.
3. The protections afforded in this section do not prohibit a respondent or a respondent's legal counsel from exercising the respondent's constitutional right of due process under the law, or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law.

SECTION 20. AMENDMENT. Section 43-05-17 of the North Dakota Century Code is amended and reenacted as follows:

43-05-17. Penalty. Any A person violating any provision of this chapter shall be for which another penalty is not provided, is guilty of a class B misdemeanor. In addition, the civil remedy of injunction is available to the board to restrain and enjoin any violation of this chapter without the need to prove actual damages to any person.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 451

SENATE BILL NO. 2138  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Chiropractic Examiners)

### CHIROPRACTIC PRACTICE DEFINED

AN ACT to amend and reenact subsection 2 of section 43-06-01 of the North Dakota Century Code, relating to the definition of the practice of chiropractic.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-06-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "The practice of chiropractic" ~~means the~~ includes:
  - a. The examination, evaluation, and diagnosis, by means including X-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor, preparatory to the treatment of patients, and the;
  - b. The treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature, and includes the;
  - c. The practice of physiotherapy, electrotherapy, hydrotherapy, and all;
  - d. All other procedures taught by chiropractic colleges, accredited by the council on chiropractic education or its successor, but; and
  - e. 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.

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.

Approved March 15, 1991  
Filed March 15, 1991

## CHAPTER 452

HOUSE BILL NO. 1429  
(Representatives Bodine, Mahoney, Gorman)  
(Senator Tennefos)

**CONTRACTOR LICENSE RENEWAL**

AN ACT to amend and reenact section 43-07-10 of the North Dakota Century Code, relating to renewals of contractors' licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Revocation of license for failure to renew. Any license issued under ~~the provisions of~~ this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal ~~thereof. For the purpose of obtaining such.~~ To obtain a certificate of renewal, the licensee shall file with the registrar an application ~~therefor, which application shall be~~ accompanied by two copies of a list in duplicate showing listing of each contract or subcontract obtained by the licensee during the preceding fiscal year in North Dakota this state over the amount of ten thousand dollars, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation or other person who issued the bond. The registrar shall within a reasonable time forward one copy of ~~such~~ the list to the state tax commissioner and shall also indicate whether ~~or not~~ the license of the applicant was renewed by ~~him~~ the registrar. The application for ~~such~~ a certificate of renewal must be made to the registrar on or before the first day of February of each successive fiscal year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a license renewal fee equal to twenty percent of the license fee ~~for the original license established in section 43-07-07.~~ If any ~~applicant for a certificate of renewal shall apply~~ contractor applies for a renewal under a class different from the license ~~theretofore previously issued to him, such the~~ contractor, the new license ~~shall may~~ be issued only upon the showing ~~and,~~ under the terms and conditions, and upon the payment of the ~~same~~ fee required for the issuance of an original license of the class applied for. All certificates of renewal ~~wherein in which~~ the applicant does not apply for a change in the class of license ~~shall~~ must be issued by the registrar to the applicant when the application is properly filed and the ~~license~~ renewal fee is paid. If any contractor fails to file an application for a certificate of renewal when due, ~~such contractor the~~ registrar shall ~~have his~~ revoke the contractor's license ~~revoked.~~ Any. The registrar shall notify by mail a contractor ~~who had his~~ whose license is revoked ~~shall be notified by mail of~~ ~~such~~ the revocation within sixty days ~~of after~~ the filing deadline. ~~He~~ The contractor may then renew ~~his~~ the license within ninety days ~~of after~~ the filing deadline by paying a penalty fee of twenty-five percent of the ~~original~~ license fee ~~and set forth in section 43-07-07,~~ 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 and waiting period prescribed in section 43-07-09.

Approved March 8, 1991

Filed March 8, 1991

## CHAPTER 453

HOUSE BILL NO. 1291  
(Representatives DeMers, Price, Scherber)  
(Senators Mathern, Nalewaja)

### NURSES AND NURSES' ASSISTANTS

AN ACT to create and enact a new subsection to section 43-12.1-02, a new subsection to section 43-12.1-04, a new subsection to section 43-12.1-08, a new subsection to section 43-12.1-15, and a new section to chapter 43-12.1 of the North Dakota Century Code, relating to regulation of nurses and assistants to nurses; to amend and reenact sections 43-12.1-01 and 43-12.1-04 of the North Dakota Century Code, relating to policy with respect to the regulation of nursing practice; to provide a penalty; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-01. Statement of policy. The legislative assembly finds that the practice of nursing is directly related to the public welfare of the citizens of the state of North Dakota and is subject to regulation and control in the public interest to assure that qualified, competent practitioners and high quality standards are available. It is essential to govern qualifications for licensure nursing practice with requirements for the maintenance of high standards and to state sanctions by which an illicit, unqualified, dishonest person or one that is otherwise against the public interest can be disciplined. The legislative assembly further declares that it is the policy of this state to regulate through the board of nursing the practice of nursing, those engaged in licensed nursing practice, and all persons who assist in the practice of nursing. A person who practices or offers to practice nursing or who represents that the person is licensed under this chapter or is qualified to assist in the practice of nursing without qualifying under this chapter endangers the public health. This chapter shall be liberally construed in order to carry out its purposes and objectives.

SECTION 2. A new subsection to section 43-12.1-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Assistant to the nurse" means, without regard to agency title, a person who is authorized to perform nursing functions or nursing tasks legally delegated and supervised by a licensed nurse.

SECTION 3. AMENDMENT. Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. Persons exempt from provisions of chapter. This chapter ~~shall~~ does not apply to:

1. Persons who give nursing assistance in cases of emergency or disaster.
2. Students practicing nursing as a part of a board approved nursing education program.
3. Legally licensed nurses of another state who are employed in this state by the United States government or a bureau, division, or agency thereof.
4. Legally licensed nurses of another state or Canada, whose employment requires them to accompany and care for a patient who is in transit for medical treatment.
5. A person who provides nursing care or performs nursing functions or nursing tasks for an immediate family member.
6. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.

SECTION 4. A new subsection to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

A person who is not licensed under this chapter and who provides nursing services in a hospital as defined in section 23-30-01.

SECTION 5. A new subsection to section 43-12.1-08 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Establish, implement, and maintain a registry of each person who meets the definition of assistant to the nurse.

SECTION 6. A new subsection to section 43-12.1-15 of the North Dakota Century Code is created and enacted as follows:

Employ a person to perform nursing or nursing-related functions or tasks unless the person is authorized by the board to perform those functions or tasks.

SECTION 7. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Grounds for discipline - Assistant to the nurse. The board may revoke, suspend, or deny the registration of a person providing assistance to a nurse if that person:

1. Has been convicted of an offense determined by the board to have a direct bearing upon that person's ability to serve the public as an assistant to the nurse, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1;

2. Has been disciplined by a board of nursing or another state agency in another state; or
3. Has engaged in an act in violation of rules adopted by the board.

SECTION 8. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 1993, and after that date is ineffective.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 454

HOUSE BILL NO. 1110  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Board of Nursing)

### PRESCRIPTIVE PRACTICES FOR NURSES

AN ACT to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to establishment and duties of a prescriptive authority committee; and to amend and reenact subsection 5 of section 43-12.1-02 and subsection 16 of section 43-12.1-08 of the North Dakota Century Code, relating to definition of the practice of nursing as a registered nurse and the powers and duties of the board of nursing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-12.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The "practice of nursing as a registered nurse" means the performance of acts requiring the specialized knowledge, judgment, and skill based on principles of the biological, physical, behavioral, and social sciences in:
  - a. The maintenance of health and prevention of illness.
  - b. Diagnosing human responses to actual or potential health problems.
  - c. Providing supportive and restorative care, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
  - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
  - e. Collaboration in the implementation of the total health care regimen and execution of a medical regimen as prescribed or authorized by a licensed physician or dentist.
  - f. The performance of such additional acts, including prescriptive practices under the supervision of a licensed physician, which are recognized by the nursing profession as proper to be performed by registered nurses who have had ~~additional~~ specialized advanced preparation and are authorized by the board through its rules to perform such acts.

For purposes of this subdivision:

- (1) "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist. Prescriptive practices must be consistent with the scope of practice submitted by the registered nurse to obtain advanced licensure.
- (2) "Supervision of a licensed physician" means performance under a contract with a licensed physician for review and acknowledgement of appropriate prescriptive practices for implementation by the registered nurse with advanced licensure who is authorized by the board to write a prescription to be filled by a licensed pharmacist.

SECTION 2. AMENDMENT. Subsection 16 of section 43-12.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. Establish standards for quality of practice for registered nurses and licensed practical nurses functioning in **specialized advanced practice** roles after consultation with the North Dakota state nurses association, the North Dakota licensed practical nurses association, and other recognized nursing specialty groups.

SECTION 3. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Prescriptive practices for registered nurses with advanced licenses. The nature and extent of prescriptive practices must be determined by a prescriptive authority committee comprised of two members of the board of nursing, one of whom must be a registered nurse; one physician appointed by the board of medical examiners; and one pharmacist appointed by the board of pharmacy. The committee may retain consultants as necessary. The committee shall recommend rules regarding prescriptive practices for adoption by the board. Rules adopted by the board must include the evidence required by the board as verification of education and training in pharmacology and clinical management of drug therapy in order to consider an application for prescriptive privileges, and the nature and extent of the collaboration and consultation required from the supervising physician. The application for prescriptive practices must include an affidavit from the supervising physician acknowledging the manner of review and approval of the planned prescriptive practices. The board shall notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of the registered nurses with advanced licenses who are authorized to write prescriptions to be filled by a licensed pharmacist.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 455

SENATE BILL NO. 2492  
(Senators Heinrich, DeKrey)  
(Representatives Shide, DeMers, Cleary)

### TEMPORARY NURSING LICENSES

AN ACT to amend and reenact subsection 19 of section 43-12.1-08 of the North Dakota Century Code, relating to the powers and duties of the board of nursing to issue temporary licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 19 of section 43-12.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19. Issue temporary licenses to persons who do not meet the educational qualifications in section 43-12.1-12 but meet all other requirements. A temporary license may be issued only once and may be renewed for a period ~~not to exceed two consecutive years for a temporary practical nurse license or of four consecutive years for a temporary registered nurse license or for a longer period if determined appropriate by the board.~~ The board by administrative rule may identify the requirements for issuance and renewal of the temporary license each year based upon progress towards meeting the educational requirements identified in section 43-12.1-12.

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

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 456

SENATE BILL NO. 2425  
(Senators Nalewaja, Dotzenrod)  
(Representatives Larson, D. Olsen, DeMers)

### PRESCRIPTION DISPENSING

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to oral transmission of refilled prescriptions; and to amend and reenact subsections 4 and 18 of section 43-15-01 of the North Dakota Century Code, relating to definitions for the purposes of dispensing prescription drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 18 of section 43-15-01 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the order that has been reduced to writing in the patient's record, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.
  
18. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded, or dispensed by a pharmacist or any order for drugs or medical supplies transmitted orally by a nurse licensed under chapter 43-12.1 as written and signed by such a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner.

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

Oral transmission of refill prescriptions. An oral reorder for a prescription drug may be accepted and dispensed by a pharmacist or registered pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to transmit the oral refill prescription. Before authorizing the transmittal of the oral refill prescription, the practitioner shall place a written copy of the prescription in the patient's records. Only a registered pharmacist or a registered pharmacist intern may receive an oral refill prescription. An oral refill prescription received by an agent or clerical person employed by a pharmacy

may not be dispensed. The licensing board of a practitioner shall notify the board of pharmacy and board of nursing in writing, on an annual basis or more frequent basis if necessary, of the specific nurse or nurses who are authorized by the practitioner to transmit oral refill prescriptions.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 457

SENATE BILL NO. 2171  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Pharmacy)

### PHARMACY PRACTICE DEFINED

AN ACT to amend and reenact subsection 16 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:

SECTION 1. AMENDMENT. Subsection 16 of section 43-15-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. "Practice of pharmacy" means the interpretation ~~and~~ 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, and drug utilization ~~reviews~~ evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, consulting, and educating where necessary or where 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 appropriate and where 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; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 458

SENATE BILL NO. 2172  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Pharmacy)

### UNLAWFUL PRACTICE OF PHARMACY

AN ACT to amend and reenact section 43-15-14 of the North Dakota Century Code, relating to who may sell drugs, poisons, medicines, or chemicals, and to the unlawful practice of pharmacy; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~43-15-14. Drugs, poisons, medicines, chemicals - Who may sell. No drug, poison, medicine, or chemical, except patent or proprietary preparations shall be manufactured, compounded, sold, or dispensed in this state for medicinal use by any person other than a registered pharmacist or pharmacy intern enrolled in a school of pharmacy after the freshman year as provided in section 43-15-15, or regularly licensed physician, nor shall any person except a registered pharmacist, regularly licensed physician, or pharmacy intern enrolled in a school of pharmacy after the freshman year as provided in section 43-15-15, dispense or compound a prescription of a medical practitioner except as provided in this chapter.~~

#### Unlawful practice of pharmacy.

1. Applicability. No person may engage in the practice of pharmacy unless registered to practice pharmacy under this chapter. Physicians or other practitioners as defined in this chapter who are licensed under the laws of this state may dispense and administer prescription drugs to their patients in the practice of their respective professions if specifically authorized to do so by state law.
2. Penalties. Any person who is found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed one thousand dollars for each offense. Each violation of this chapter or the rules adopted under this chapter pertaining to unlawfully engaging in the practice of pharmacy also constitutes a class B misdemeanor.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 459

HOUSE BILL NO. 1609  
(Kloubec)

(Approved by the Committee on Delayed Bills)

### **PHYSICIAN ASSISTANT PRESCRIPTIVE AUTHORITY**

AN ACT relating to physician assistants prescribing medications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Physician assistant - Limitations on prescribing drugs. A physician assistant may not prescribe medications except as an agent of the supervising physician. A physician assistant may prescribe medications, in the name of the supervising physician if the authority has been assigned by the supervising physician; however, a physician assistant may not prescribe schedule II controlled substances. The prescription container label must bear the name of the supervising physician and may also bear the name of the physician assistant. Appropriate medical records must be maintained. The state board of medical examiners shall notify the board of pharmacy in writing annually, or more frequently if required by changes, of each physician assistant who is authorized as an agent of a supervising physician to prescribe medications.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 460

HOUSE BILL NO. 1426  
(Henegar)

### PHYSICIAN EMPLOYMENT BY HOSPITAL

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to authorization of physicians to be employed by hospitals incorporated as nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Employment of physicians by nonprofit corporations doing business as hospitals. Notwithstanding any other provision of law, it is permissible for a hospital incorporated as a nonprofit corporation under chapter 10-24 to directly or indirectly employ a physician provided that the employment relationship between the physician and hospital is evidenced by a written contract containing language to the effect that the hospital's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the hospital. Under this section a hospital may not be deemed to be engaged in the practice of medicine.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 461

HOUSE BILL NO. 1483  
(Representatives Nelson, Schneider, Gerntholz)  
(Senators E. Hanson, Bowman)

### PHYSICIAN LICENSING OF FOREIGN GRADUATES

AN ACT to amend and reenact subsection 3 of section 43-17-18 of the North Dakota Century Code, relating to the qualifications of foreign medical graduates for a license to practice medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-17-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. However, the board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program. If an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements;

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 462

SENATE BILL NO. 2181  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Attorney General)

### **MEDICAL EXAMINERS PROSECUTION COSTS**

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to the costs of prosecution by the board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician, the board may direct any physician to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board and the commission on medical competency in the investigation and prosecution of the case. When applicable, the physician's license may be suspended until the costs are paid to the board.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 463

SENATE BILL NO. 2097  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Attorney General)

**MEDICAL COMPETENCY COMMISSION ACTION**

AN ACT to amend and reenact section 43-17.1-05 of the North Dakota Century Code, relating to the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. All residents have the right to make or refer complaints to the commission with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Upon receipt of any complaint or request, the commission shall conduct such investigation as it deems necessary to resolve the matter as it deems appropriate. The commission shall determine whether the physician has committed any of the grounds for disciplinary action provided for by section 43-17-31.
2. If the commission determines that a formal hearing should be held concerning the competency of to determine whether any licensed physician has committed any of the grounds for disciplinary action provided for by section 43-17-31, it shall inform the respondent physician involved of the specific charges to be considered by serving upon him 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 shall not participate in any proceeding before the board relating to said complaint. The complaint shall be prosecuted before the board by the attorney general or one of his assistants.
3. If the commission finds that there are insufficient facts to warrant further investigation or action, the complaint shall be dismissed and the matter is closed. The commission 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 final action or recommendations, if any, concerning the complaint.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 464

HOUSE BILL NO. 1555  
(Representatives DeMers, B. Anderson, Myrdal)  
(Senators Heigaard, Yockim, Freborg)

### PHYSICIAN LOAN REPAYMENT PROGRAM

AN ACT to establish a state-community matching physician loan repayment program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State-community matching physician loan repayment program.

1. The North Dakota state-community matching physician loan repayment program is established as provided by this Act.
2. The purpose of the program is to increase the number of physicians practicing medicine in North Dakota communities with defined health professional medical need.
3. Under the program, loan repayments may be made to a recipient for educational expenses incurred while the recipient was attending an accredited four-year allopathic or osteopathic medical school located in the United States or Canada.
4. Loan repayment funds consist of a fifty percent match from the state and a fifty percent match from the selected community.
5. Each recipient is limited to a forty thousand dollar maximum loan repayment to be paid over four years.
6. The state health council shall select up to five recipients in five communities each year as participants in the program.

SECTION 2. Powers of state health council. The state health council may:

1. Determine eligibility and qualifications of an applicant to receive loan repayment in accordance with section 3 of this Act.
2. Identify communities with health professional medical need and establish a priority ranking for program participation of the selected communities.
3. Determine the amount of the loan repayment an applicant may receive within the parameters of this Act. This determination must include an investigation of the outstanding education loans incurred by the applicant.
4. Determine the condition of loan repayment to an applicant.

5. Enter into a four-year nonrenewable loan repayment program contract with the applicant and the selected community to provide repayment of education loans in exchange for the physician agreeing to practice medicine in the selected community.
6. Receive and use funds appropriated for the program.
7. Receive and use funds paid by the selected communities for repayment of education loans for physicians who apply and qualify for assistance under the program.
8. Enforce any contract under the program.
9. Cancel a contract for reasonable cause.
10. Participate in federal programs supporting repayment of loans to eligible physicians, and agree to the conditions of the federal programs.
11. Create a loan repayment application packet.
12. Accept property from any entity.
13. Work with the university of North Dakota's center for rural health in implementing this Act.

SECTION 3. Physician selection criteria - Eligibility for loan repayment.

1. The state health council shall establish criteria to apply to an applicant for a loan repayment. The criteria must include:
  - a. The extent to which an applicant's training is in a medical specialty determined by the state health council to be needed in a selected community.
  - b. The applicant's commitment to serve in a community with defined health professional medical need.
  - c. The applicant's achieving a match with a selected community.
  - d. The availability of the applicant for service, with the highest consideration being given to an applicant who is available for service at the earliest date.
  - e. The applicant's professional competence and conduct.
  - f. The applicant's willingness to accept medicare and medicaid assignment.
2. The state health council shall give priority for program participation to an applicant who:
  - a. Graduated from the university of North Dakota school of medicine and is enrolled in or has completed a university of North Dakota school of medicine postgraduate residency training program;

- b. Graduated from an accredited out-of-state medical or osteopathic college and is enrolled in or has completed a university of North Dakota school of medicine postgraduate residency training program; or
  - c. Graduated from the university of North Dakota school of medicine and is enrolled in or has completed an accredited out-of-state postgraduate residency training program in a specialty training program not available in this state.
3. A physician who receives loan repayment under this Act:
- a. Must be a graduate of an accredited four-year allopathic or osteopathic medical school located in the United States or Canada;
  - b. Must be enrolled in or have graduated from an accredited graduate training program in medicine prior to or within one year after submitting an application to participate in the loan repayment program and not have practiced full-time medicine in this state within three years before the date of the application;
  - c. Must be licensed to practice medicine in this state;
  - d. Shall submit an application to participate in the loan repayment program; and
  - e. Must have entered into an agreement with a selected community to provide full-time medical services for a minimum of four years at the selected community if the applicant receives a loan repayment program contract.

#### SECTION 4. Community selection criteria.

1. The state health council shall apply at least the following criteria for selecting a community with defined health professional medical need:
  - a. The ratio of physicians to population in the community.
  - b. Access by the residents of the community to medical care within the community and in the surrounding area.
  - c. Assessment of the expected number of physician visits within the community per year.
  - d. The mix of physician specialties within the community.
  - e. Indications of community support for more physicians within the community.
2. The state health council shall give priority for participation to a community that:
  - a. Demonstrates a need for primary care physicians or for a physician trained in the specialty of psychiatry; or

- b. Has a population of not more than fifteen thousand persons.
3. In selecting a community with health professional medical need, the state health council may consult public and private associations and organizations and make an onsite visit to a community for assessment.

SECTION 5. Eligible loans. The state health council may provide for loan repayment to a recipient of any education loan. The council may not provide for repayment of any loan that is in default at the time of the application. The amount of repayment must be related to the applicant's outstanding education loans. No applicant may receive repayment in an amount greater than the total outstanding balance on the applicant's education loans together with applicable interest. Loan payments may not be used to satisfy other service obligations under similar programs.

SECTION 6. Breach of loan repayment contract. A recipient of loan repayment under this Act who breaches the loan repayment program contract by failing to begin or complete the obligated service is liable for twice the total uncredited amount of all loan repayment that was contracted on a prorated monthly basis. Any damages the state is entitled to recover under this Act shall be paid to the health council within one year from the date of the breach of the loan repayment program contract. Amounts not paid within the one-year period may be subject to collection through deductions in medicaid payments or other collection methods. Damages recoverable for breach of contract include all interest, costs, and expenses incurred in collection, including attorneys' fees. Damages collected under this section must be prorated among the state and the involved community. The state share must be deposited in the general fund. For compelling reasons, the health council may agree to and accept a lesser measure of damages for breach of a loan repayment program contract.

SECTION 7. Release from contract obligation. An applicant is released from the applicant's obligated service, without penalty, if the obligated service has been completed; the applicant is unable to complete the term of the contract because of permanent physical disability; the applicant dies; or the applicant proves extreme hardship or other good cause, to be determined by the council. A decision by the health council not to release an applicant from the applicant's obligated service without penalty, is reviewable by the district court.

SECTION 8. Term of obligated service. The length of the term of obligated service of a recipient of a loan repayment under this Act is four years.

SECTION 9. Payment. No payment may be made under this Act until the physician has practiced at least six months on a full-time basis in a selected community with health professional medical need. Any arrangement made by the state health council for loan repayment in accordance with this Act must provide that any loan repayment for a year of obligated service be made no later than the end of the fiscal year in which the physician completes the year of obligated service.

SECTION 10. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state health council for the purpose of establishing and operating the North

Dakota state-community matching physician loan repayment program for the biennium beginning July 1, 1991, and ending June 30, 1993.

Start-up and administrative costs	\$ 5,000
Loan repayment funds	<u>75,000</u>
Total general fund appropriation	\$80,000

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 465

SENATE BILL NO. 2534  
(Yockim, Lindaas, E. Hanson, Krauter)

### DENTISTS AND DENTAL HYGIENISTS

AN ACT to create and enact a new section to chapter 43-28 of the North Dakota Century Code, relating to fees assessed by the board of dental examiners; to amend and reenact sections 43-20-02, 43-20-06, 43-20-07, 43-20-12.1, 43-20-12.2, subsection 5 of section 43-28-02, sections 43-28-03, 43-28-04, 43-28-05, 43-28-06, 43-28-11, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-15, 43-28-16, 43-28-17, 43-28-18, 43-28-22, and 43-28-24 of the North Dakota Century Code, relating to the regulation of dental hygienists and the regulation of the practice of dentistry; and to repeal section 43-20-04 of the North Dakota Century Code, relating to the recording of dental hygienist licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-02. Dental hygienists - Qualifications - Examinations - Registration and license. Any person of good moral character not already a licensed dental hygienist of this state, being a graduate of an accredited high school or its equivalent, who is a graduate of a school of dental hygiene approved or provisionally approved by the council on education commission on dental accreditation of the American dental association, upon making application applying for such a license and upon the payment of forty dollars an amount determined by the board, may be examined by the North Dakota state board of dental examiners, on the subjects considered essential by it for a dental hygienist. Such The examinations shall must be conducted by the board of dental examiners or by a designee of the board, or by a regional dental testing service in which the board participates, or by other national or regional dental testing services that the board recognizes. If the applicant, in the opinion of the board, successfully passes the examination, the applicant shall must be registered and licensed as a dental hygienist. For such applicants as Applicants who fail to pass a satisfactory initial examination, subsequent examinations may be had before the board reexamined upon payment of a the fee of fifteen dollars determined by the board for each subsequent examination, but no. An applicant shall may not be allowed to take more than three examinations. Applicants for examination shall submit their credentials to the board at least thirty days prior to before the examination date, which date shall must correspond to the date of examination for applicants for a license to practice dentistry in this state.

The North Dakota board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the North Dakota board of dental examiners in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Section 43-20-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - Fees - Display. On or before January first of each year, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of such the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default. The payment of such the fee within such that thirty-day period, with an additional sum of fifteen dollars determined by the board, shall excuse the default. The board may collect such the fee by suit. Such Each licensed hygienist must shall display conspicuously at the place of employment the annual registration license.

SECTION 3. AMENDMENT. Section 43-20-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-07. Dental hygienists from other states. Any dental hygienist duly licensed to practice as such in another state, and who is of good moral character and desirous of removing to this state, and deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and a letter from the secretary of the state dental association, or the secretary of the state dental hygienists association or organization, of such that state, certifying that the dental hygienist is of good moral character and professional attainments, may upon the payment of a the fee of forty dollars determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the said board shall deem deems necessary and proper, be granted a license to practice in this state. The board may, however, dispense with examining such an applicant if the state in which the applicant was previously licensed has a reciprocal agreement with this state.

SECTION 4. AMENDMENT. Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists. Five years from July 1, 1971, or upon Upon the fifth anniversary of the issuance of his a license, whichever occurs last, to practice dental hygiene and each five years thereafter, each person licensed to practice dental hygiene in this state shall provide the state board of dentistry dental examiners evidence, of a nature suitable to the board, that such the licensed person has attended, or participated in such the amount of continuing education in dental hygiene as shall be is required by the board. The minimum requirement may not be less than forty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other such evidence of continuing education approved by the board may approve.

Any licensed person who ~~shall fail~~ fails to comply with this requirement ~~shall~~ must, at the discretion of the board, be reexamined to determine ~~his~~ the person's competency to continue licensure. If, in the opinion of the board, ~~such~~ the licensed person does not qualify for further licensed practice, the board shall suspend ~~such~~ the license until ~~such time~~ as the dental hygienist ~~shall provide~~ provides acceptable evidence to the board of ~~his~~ the hygienist's competency to practice.

SECTION 5. AMENDMENT. Section 43-20-12.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address. A licensed dental hygienist shall notify the secretary-treasurer of the board of dental examiners of any new ~~business~~ address within thirty days of the address change. A licensed dental hygienist may not practice in this state for more than thirty days after the change of ~~business~~ address without complying with this section.

SECTION 6. AMENDMENT. Subsection 5 of section 43-28-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, ~~air force~~, public health service, coast guard, veterans bureau, or director of the dental division of the North Dakota state department of health and consolidated laboratories.

SECTION 7. AMENDMENT. Section 43-28-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies. The state board of dental examiners ~~shall consist~~ consists of ~~six~~ ~~seven~~ members to be appointed by the governor. The membership of the board ~~shall~~ must include five dentist members and, one dental hygienist member, and one consumer member. Appointment to the board ~~shall be~~ is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there ~~will~~ must be two new board members appointed, one of whom ~~shall be~~ is a dentist and the other a dental hygienist. ~~The first five-year term of the dental hygienist will commence on July 1, 1981, and continue through March 15, 1986 and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member ~~shall~~ may serve more than one ~~entire five-year term~~ ten years or two ~~5-year terms of office,~~ and any member who has not served an ~~entire five-year term~~ may be reappointed to the board. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board ~~shall~~ must be filled by the governor by appointment.

SECTION 8. AMENDMENT. Section 43-28-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. ~~No~~ A person ~~shall~~ may not be appointed as a dentist member of the board unless that person:
  - a. Is a duly licensed and registered dentist.
  - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding ~~his~~ the appointment.
  - c. ~~Never has served as a member of the board for an entire five-year term.~~
2. ~~No~~ A person ~~shall~~ may not be appointed as the dental hygienist member of the board unless that person:
  - a. Is a duly licensed and registered dental hygienist in accordance with ~~the provisions of~~ chapter 43-20.
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
  - c. ~~Never has served as a member of the board for an entire five-year term.~~
3. A person may not be appointed as the consumer member of the board unless that person:
  - a. Has been a resident of North Dakota for five years.
  - b. Has no personal or family financial relationship with the dental profession.
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a person engaged in any of those occupations.
4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas with the following exceptions:
  - a. ~~The issuance, suspension, and revocation of dental licenses.~~
  - b. ~~Any disciplinary action taken against dentists.~~
  - c. The examination of dentists for licensure except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

SECTION 9. AMENDMENT. Section 43-28-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting, at such a place as is designated by it the board and such special meetings as are when necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of eighty five ninety dollars for each day actually engaged in the duties of his the office, twenty cents per mile (1.61 kilometers) for the distance necessarily traveled in going to and returning from meetings of the board, and not to exceed actual expenses per day for meals and lodging and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The secretary-treasurer shall must be paid an annual salary equal to fifteen percent of all funds received by the board during the year. Four members of the board shall constitute a quorum but a smaller number may adjourn from time to time.

SECTION 10. AMENDMENT. Section 43-28-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-06. Powers of board. The board shall have the power may:

1. To make; amend; revise Adopt and enforce reasonable rules and regulations to govern its proceedings and to carry out the provisions of the this chapter.
2. To examine Examine applicants for licenses to practice dentistry or dental hygiene in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.
3. To issue Issue, suspend, revoke, limit, restrict, and reinstate, licenses to practice dentistry or dental hygiene and the annual certificates of registration upon any grounds authorized by this chapter.
4. To issue Issue subpoenas to require the attendance of witnesses, and the production of documentary evidence, and to may administer oaths. Any member or executive officer of the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas so issued shall must be attested by the secretary who shall affix the seal of the board thereto.
5. To employ Employ and compensate attorneys, investigative staff, and clerical assistants and to may perform such any other duties as are imposed upon the board by this chapter.
6. Establish minimum continuing professional education requirements for dentists, dental hygienists, and dental assistants.

SECTION 11. AMENDMENT. Section 43-28-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-11. Examination required - Application - Qualifications - Fees. Any person who desires to obtain a license to practice dentistry in this state shall make application apply to the secretary-treasurer of the board on

such forms as it may provide prescribed by the board and shall submit to an examination by the board. The application ~~shall~~ must be verified under oath to the effect that all of the statements contained ~~therein~~ in the application are true of applicant's own knowledge, and must be received by the secretary-treasurer of the board at least thirty days ~~prior to~~ before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and the sum of one hundred fifty dollars an application fee as determined by the board. Additional costs of simultaneous examination regional or other state's examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant ~~must~~ shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a person of good moral character.

SECTION 12. AMENDMENT. Section 43-28-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12. Examination - Subjects covered. At the next regular meeting of the board held after an application for a license and a certificate of registration to practice dentistry in this state is made the applicant shall appear before the board, which shall give an examination to test the applicant for fitness to practice dentistry. The board may require the applicant to supply the board with the results of the applicant's national board examination which may at the discretion of the board be considered determinative of the applicant's theoretical knowledge and scholastic fitness for the practice of dentistry. The board may require the applicant to supply the board with the results of the applicant's clinical competency examination which may be administered:

1. Directly by the board;
2. By a regional dental testing service in which the board participates; or
3. By a regional dental testing service determined by the board to be equivalent to those in which the board directly participates.

The board may consider the results of a clinical competency examination to be determinative of the applicant's clinical fitness for the practice of dentistry.

SECTION 13. AMENDMENT. Section 43-28-12.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12.1. Simultaneous Regional or other states' examination. The results of an examination given in another state by that state's equivalent to or an examination administered by a regional dental testing service recognized by the North Dakota board of dental examiners may be considered by this state's board as an example of the applicant's fitness to practice dentistry in this state, if that licensing body or regional testing service is officially recognized by the board. The other state examination must be observed by a member of this state's board, or by a designee of the board, and the applicant must be found to be of good moral character.

SECTION 14. AMENDMENT. Section 43-28-12.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists. ~~Five years from July 1, 1977, or upon~~ Upon the fifth anniversary of the issuance of ~~his a license, whichever occurs last,~~ to practice dentistry and each five years thereafter, each person licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that ~~such~~ the licensed person has attended, or participated in ~~such~~ the amount of continuing education in dentistry ~~as shall be~~ required by the board. The minimum requirement ~~shall be~~ may not be less than ~~fifty seventy~~ fifty seven hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other ~~such~~ such evidence of continuing education ~~approved by the board may approve.~~ approved by the board.

Any licensed dentist who fails to comply with this requirement ~~shall may,~~ at the discretion of the board, be reexamined to determine ~~his the dentist's~~ his the dentist's competency to continue licensure. If, in the opinion of the board, ~~such the~~ such the licensed dentist does not qualify for further licensed practice, the board shall suspend ~~such the~~ such the license until ~~such time as~~ such time as the dentist ~~shall provide~~ provides acceptable evidence to the board of ~~his the dentist's~~ his the dentist's competency to practice.

SECTION 15. AMENDMENT. Section 43-28-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-14. Reexamination - Fee - Additional education. If an applicant fails to pass the examination given by the board, the applicant may apply for another examination, and upon the payment of ~~a the fee of twenty five dollars~~ the fee of twenty five dollars ~~shall determined by the board must be~~ reexamined. The board shall determine the number of times an applicant may be reexamined, ~~provided, that.~~ However, if the applicant fails on three occasions to pass the examination given by the board or an equivalent examination under section 43-28-12.1, the applicant shall provide evidence of additional education as required by the board ~~prior to before~~ before applying for another examination in this state.

SECTION 16. AMENDMENT. Section 43-28-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-15. License and certificate - When issued to practitioners of another state. The board may issue a license and certificate of registration to practice dentistry in this state to any person who wishes to ~~move to this state from another state practice dentistry in North Dakota~~ move to this state from another state practice dentistry in North Dakota upon a practical examination ~~only, if such~~ only, if such the person:

1. Has been licensed to practice dentistry in another state where the requirements are equivalent to those of this state, and where like provisions are accorded to holders of certificates of registration issued in this state.

2. Is a reputable dentist of good moral character.
3. Pays to the board ~~a the fee of one hundred fifty dollars~~ determined by the board.
4. Delivers to the board a certificate from the examining or licensing board of the every state in which ~~he~~ the person is practicing or is licensed to practice, certifying that ~~he~~ the person is a licensed and registered dentist in that state, and is of good moral character.
5. Demonstrates ~~his~~ the person's ability to the satisfaction of the board.

~~However, if there is complete reciprocity between the applicant's state and this state, the~~ The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.

SECTION 17. AMENDMENT. Section 43-28-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-16. Certificate - Term - Displayed in place of business - Renewal - Fee. A certificate of registration issued under ~~the provisions of~~ this chapter ~~shall be~~ is valid for only one year and ~~shall~~ must be renewed on or before the first day of January in each year. The fee for renewal of the certificate ~~shall not exceed seventy five dollars~~ must be determined by the board and must be submitted ~~prior to~~ before January first. The holder of a license and certificate of registration shall display the ~~same~~ license and certificate conspicuously in the holder's place of business. The certificate of registration or the renewal ~~thereof, shall be~~ of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

SECTION 18. AMENDMENT. Section 43-28-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay annual fee - Revocation of license. Whenever a licensed dentist fails to pay the annual fee for the renewal of the certificate of registration ~~prior to~~ before January first, after thirty days' written notice of ~~such the~~ default without proper payment, the board may revoke the license to practice dentistry and notify the dentist of the revocation. The payment of the annual fee within the thirty-day period, with an additional sum of ~~fifty dollars, determined by the board~~ will excuse the default.

SECTION 19. AMENDMENT. Section 43-28-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for revocation or suspension of license and certificate. The board may revoke ~~or, suspend, limit, or restrict the scope of~~ the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional or immoral conduct.

2. Been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted unlicensed persons to practice dentistry in the office under ~~his~~ the dentist's control.
6. Become grossly negligent in the practice of ~~his~~ the profession.
7. Practiced fraud and deceit in obtaining ~~his~~ the license or in the practice of dentistry.
8. ~~Employed a solicitor or agent to obtain business.~~
- ~~9.~~ 9. Willfully betrayed confidential relations.
- ~~10.~~ 9. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; ~~provided, however, that.~~ However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of ~~such~~ the association.
- ~~11.~~ 10. Shared any professional fee with anyone or paid anyone for sending or referring patients to ~~him;~~ ~~provided, however, that this shall~~ the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
- ~~12.~~ 11. Used any advertising of any character tending to mislead and deceive the public.
- ~~13.~~ ~~Controlled or owned, or presently controls or owns a dental laboratory or X-ray laboratory, or operates the same in connection with his office, and has advertised such dental or X-ray laboratory in a manner prohibited herein.~~
12. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
13. Prescribed medications for reasons or conditions outside the scope of dental practice.

14. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
15. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
16. Willfully engaged in fraudulent submission of insurance claims.
- +4- 17. Made any false or untrue statements in his the application for an examination to obtain a license to practice dentistry.
- +5- 18. Made any false representations that he the person is the holder of a license or certificate of registration to practice dentistry.
- +6- 19. Made any false claims that he the person is a graduate of a dental college or the holder of any diploma or degree from such a dental college.
- +7- 20. Violated any of the provisions of this chapter.

SECTION 20. AMENDMENT. Section 43-28-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-22. Reinstatement of license - Renewal of certificate - When issued - Fees. ~~No~~ A dentist ~~shall~~ may not be reinstated, and ~~no~~ a license and certificate of registration ~~shall~~ may not be reissued, except on the following conditions:

1. Where the license and certificate of registration have been revoked for cause upon one or more of the grounds specified in this chapter, a dentist may be reinstated only:
  - a. Upon application to the board for reexamination.
  - b. Upon payment of examination fees required by this chapter.
  - c. Upon successfully passing ~~said~~ the reexamination.
  - d. Upon payment of an additional administrative fee to be fixed by the board; ~~which shall not exceed seventy five dollars.~~
2. Where the license and certificate of registration has been revoked for nonpayment of annual registration fees required by this chapter, ~~said~~ the dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board ~~not to exceed seventy five dollars; provided, however, that.~~ However, the board, after an investigation, may require a dentist whose license has been revoked for nonpayment of the annual registration fee to submit to a reexamination as to ~~his~~ the person's qualification to practice dentistry before ~~he~~ the person is reinstated, if the board in the exercise of its discretion finds and determines that the best interests of the public, and the applicant, will be served thereby.

SECTION 21. AMENDMENT. Section 43-28-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-24. Duplicate license and certificate - When issued - Fee. If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate upon satisfactory proof by applicant of the loss or destruction thereof. The fee for such a duplicate license shall must be twenty dollars determined by the board and the fee for issuing a duplicate certificate of registration shall must be ten dollars determined by the board.

SECTION 22. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Fees. All license fees, registration fees, and other fees authorized to be assessed and collected by the board must be established by rules adopted by the board.

SECTION 23. REPEAL. Section 43-20-04 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 466

HOUSE BILL NO. 1206  
(Committee on Industry, Business and Labor)  
(At the request of the Real Estate Commission)

### REAL ESTATE BROKER AND SALESPERSON QUALIFICATIONS

AN ACT to amend and reenact section 43-23-05, subsection 6 of section 43-23-06.1, sections 43-23-07, 43-23-08, 43-23-08.1, 43-23-08.2, and 43-23-09, subsection 1 of section 43-23-11.1, sections 43-23-12, 43-23-13, 43-23-13.1, subsection 2 of section 43-23-15, section 43-23.1-17, subsection 1 of section 43-23.1-18, subsections 1 and 2 of section 43-23.2-02, and section 43-23.2-09 of the North Dakota Century Code, relating to real estate licensing, license standards, continuing education, investigations, designation of a real estate broker's place of business, real estate continuing education courses, civil remedies, and the real estate education, research, and recovery fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-05. Real estate license required. No person shall act as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker or advertise or assume to act as such real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker without a license issued by the real estate commission. No person shall be entitled to collect any fees, compensation, or commission as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker without having first complied with the provisions of this chapter. No copartnership, association, or corporation shall be granted a license, unless at least one partner, shareholder, or officer of the copartnership, association, or corporation, actually engaged as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker as defined herein, shall hold a license as a real estate broker, and unless every employee who acts as a real estate ~~salesman~~ salesperson or mortgage broker for such copartnership, association, or corporation shall hold a license as a real estate ~~salesman~~ salesperson or mortgage broker.

SECTION 2. AMENDMENT. Subsection 6 of section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6. "Real estate ~~salesman~~ salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 5 for or on behalf of such licensed real estate broker.

SECTION 3. AMENDMENT. Section 43-23-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-07. Real estate brokers, ~~salesmen~~ salesperson, or mortgage brokers - Exceptions. The term "real estate broker", "real estate ~~salesman~~ salesperson", or "mortgage broker" does not include:

1. Any person, partnership, association, or corporation who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, where the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
2. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in county court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
3. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
4. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
5. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.
6. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
7. Public officers while performing their duties.

\* SECTION 4. AMENDMENT. Section 43-23-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08. License standards.

1. Licenses and the renewals thereof shall be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker, a real estate ~~salesman~~ salesperson, or mortgage broker in such manner as to safeguard the interest of the public, and whose real estate license or mortgage broker license has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.
2. In addition to the requirements established by subsection 1, an applicant for a broker's or ~~salesman's~~ salesperson's license must be at least eighteen years of age.

\* NOTE: Section 43-23-08 was also amended by section 1 of Senate Bill No. 2322, chapter 467.

3. Every applicant for a license as a real estate broker:
  - a. Shall have been actively engaged as a licensed real estate ~~salesman~~ salesperson for a period of at least one year preceding the date of application, which, beginning July 1, 1979, shall be increased to two years; or
  - b. Shall have had experience as determined by the commission to be substantially equal to that which a licensed real estate ~~salesman~~ salesperson would ordinarily receive during a period of one year, which, beginning July 1, 1979, shall be increased to two years.
4. Beginning July 1, 1977, each applicant for a broker's license shall be required to have successfully completed at least sixty classroom hours in a course of study approved by the commission, and beginning July 1, 1979, each applicant shall be required to have successfully completed at least ninety classroom hours in a course of study approved by the commission. As used throughout this section, the term "classroom hours" shall mean the actual time during such course of study that the class is actually in session.
5. After July 1, 1977, each ~~salesman~~ salesperson licensee, as a condition precedent to obtaining a license renewal, shall have successfully completed prior to the first license renewal period which occurs after twelve months from the date that the initial license has been granted, at least thirty classroom hours in a course of study approved by the commission.
6. If the commission shall find that an applicant could not acquire employment as a licensed real estate ~~salesman~~ salesperson because of conditions existing in the area where ~~he~~ the salesperson resides, then the experience requirements established in subdivisions a and b of subsection 3 may be waived by the commission. The educational requirements of subsection 4 may not be waived by the commission, but guidelines may be established whereby applicants who have engaged in certain educational courses of study which are closely related to the real estate profession may be deemed to have satisfied this requirement.
7. The commission may adopt reasonable rules and regulations pursuant to the provisions of chapter 28-32 relative to procedures for licensing, approval of coursework, and for the type of certification or proof of coursework completion that must be submitted.

SECTION 5. AMENDMENT. Section 43-23-08.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-08.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the commission determines that the offense has a direct bearing upon a person's ability to serve the public as a real estate broker or ~~salesman~~ salesperson, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

\* SECTION 6. AMENDMENT. Section 43-23-08.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, 1984, and every three years thereafter, each applicant for renewal of a broker's or ~~salesman's~~ salesperson's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than twenty-four hours of approved continuing education. If a broker or ~~salesman~~ salesperson will not have been licensed three years on the date ~~he or she~~ the individual is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules promulgated 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 shall 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 shall 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 license shall 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 on or before the thirty-first day of December immediately preceding the year for which the license is issued. Any licensee failing to comply with this section shall not engage in any activity for which a license is required under this chapter, and any license not renewed by the thirty-first day of March of the year for which the license is issued shall be declared forfeit and canceled by the commission. The forfeiture and cancellation shall be performed without any notice to the licensee or any opportunity for hearing. Any person whose license has been forfeited and canceled and who desires relicensure shall be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules and regulations of the commission.

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, shall be exempt from the requirements of this section.

SECTION 7. AMENDMENT. Section 43-23-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23-09. License application. Every application for a real estate broker's license, a real estate ~~salesman's~~ salesperson's license, or a mortgage broker's license shall be in writing upon blanks prepared by the commission and shall contain such data and information as the commission may require.

SECTION 8. AMENDMENT. Subsection 1 of section 43-23-11.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 43-23-08.2 was also amended by section 1 of House Bill No. 1176, chapter 468.

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state, and shall have the power to suspend or revoke a license, impose a monetary fine, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
  - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
  - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
  - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to ~~his~~ that person's injury or damage.
  - d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom ~~he~~ the licensee acts.
  - e. Failure to account for or to remit, within a reasonable time, any moneys coming into ~~his~~ the licensee's possession belonging to others; commingling funds of others with ~~his~~ the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which shall contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
  - f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
  - g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to ~~his~~ the licensee's principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
  - h. Failing or refusing upon demand to produce any document, book, or record in ~~his~~ the licensee's possession or under ~~his~~ that person's control, concerning any real estate transaction under investigation by the commission.
  - i. Offering real property for sale or lease without the knowledge and consent of the owner or ~~his~~ the owner's authorized agent or

- on any terms other than those authorized by the owner or ~~his~~ authorized agent.
- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
  - k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
  - l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate ~~salesman~~ salesperson under this chapter.
  - m. Failing to disclose to an owner ~~his~~ the licensee's intention or true position if ~~he~~ the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with ~~his~~ the licensee's office for sale or lease.
  - n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
  - o. Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed, and to retain true copies of such statements in ~~his~~ the broker's files.
  - p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
  - q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
  - r. Accepting a commission or valuable consideration as a real estate ~~salesman~~ salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom ~~he~~ the individual is licensed as a ~~salesman~~ salesperson.
  - s. If the licensee is a broker, allowing any unlicensed ~~salesman~~ salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.

- t. Failure of a salesman salesperson to place with his that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by him the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from his salesman the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys shall then be deposited during the next business day of the depository.
- u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
- v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of his that person's licensed privilege.
- w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salesmen salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.

SECTION 9. AMENDMENT. Section 43-23-12 of the North Dakota Century Code is amended and reenacted as follows:

43-23-12. Broker's place of business - License of employed salesman salesperson.

1. Every person, partnership, association, or corporation licensed as a real estate broker or mortgage broker shall be required to have and maintain a definite place of business within this state, for the transaction of real estate or mortgage broker business, ~~or such business and any other business conducted by him~~. The certificate of registration as broker and the certificate of each real estate salesman salesperson or mortgage broker employed by such broker shall be prominently displayed in said office. The said place of business shall be designated in the license, and no license issued under the authority of this chapter shall authorize the licensee to transact business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before said removal or within ten days after said removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period. The broker's home may qualify as such place of business.
2. All licenses issued to real estate salesmen salespersons or mortgage brokers shall designate the employer of such salesmen

salespersons or brokers. Prompt notice in writing, within ten days, shall be given to the commission by any real estate salesman salesperson or mortgage broker of a change of employer, and of the name of the licensed broker into whose employ the salesman salesperson or broker is about to enter, and a new license shall thereupon be issued by the commission to such salesman salesperson or broker for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of employer or employment by any licensed real estate salesman salesperson or mortgage broker, without notice to the commission as aforesaid, shall automatically cancel ~~the that person's license to him theretofore issued~~. Upon termination of a real estate salesman's salesperson's or broker's employment, the broker employer, shall forthwith return the salesman's salesperson's license or mortgage broker's license to the commission for cancellation. It shall be unlawful for any real estate salesman salesperson or mortgage broker to perform any of the acts contemplated by this chapter either directly or indirectly after his that person's employment has been terminated and license as a salesman salesperson or mortgage broker has been returned for cancellation, until said license has been reissued by the commission.

SECTION 10. AMENDMENT. Section 43-23-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. A fee of fifty dollars must accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of fifty dollars.
3. For an individual's real estate salesman's salesperson's license and for each annual renewal of the license, a fee of forty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.
5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesman's salesperson's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee of twenty dollars.
9. For each change of name, a fee of ten dollars.

\* SECTION 11. AMENDMENT. Section 43-23-13.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker must register annually with the commission and pay the appropriate annual renewal fee. The application for renewal of a real estate broker's, real estate ~~salesman's~~ salesperson's, or mortgage broker's license shall be made to the commission no later than December thirty-first of each year after licensure. Failure to remit an annual renewal fee no later than December thirty-first automatically cancels the license on January first of the subsequent year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee as provided in section 43-23-13 may file a late renewal application before March first of the subsequent year and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof after the January first when the license was canceled.

SECTION 12. AMENDMENT. Subsection 2 of section 43-23-15 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission may assist libraries, real estate brokers and real estate ~~salesmen~~ salespersons, institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys, and programs for the benefit of real estate and the elevation of the real estate business.

SECTION 13. AMENDMENT. Section 43-23.1-17 of the North Dakota Century Code is amended and reenacted as follows:

43-23.1-17. Real estate license required. No real estate broker, ~~salesman~~ salesperson, or mortgage broker shall offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section 43-23.1-05, unless said real estate broker, ~~salesman~~ salesperson, or mortgage broker is licensed pursuant to chapter 43-23.

SECTION 14. AMENDMENT. Subsection 1 of section 43-23.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, shall be voidable at the election of the purchaser. The person making such disposition, and every director, officer, ~~salesman~~ salesperson, or agent of or for such person who shall have participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit, or interest, together with interest at the rate of six percent per year from the date of payment, property taxes and assessments paid, court costs, and reasonable attorney's fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, ~~he~~ that person may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less

\* NOTE: Section 43-23-13.1 was also amended by section 2 of House Bill No. 1176, chapter 468.

interest at the rate of six percent per year on that amount from the date of disposition.

SECTION 15. AMENDMENT. Subsections 1 and 2 of section 43-23.2-02 of the North Dakota Century Code are amended and reenacted as follows:

1. In addition to the appropriate licensing fees paid by real estate brokers and ~~salesmen salespersons~~, each person licensed for the calendar year 1976 as a real estate broker or ~~salesman salesperson~~ shall pay, at the time of application for such license, a separate fee in the amount of twenty dollars which shall be credited into the education, research, and recovery fund. Each person so licensed for the calendar year 1977 shall pay a like fee in the amount of twenty dollars which shall be credited into the fund. Thereafter, any person who is licensed as a real estate broker or ~~salesman salesperson~~ for the first time, either for the calendar year 1978 or for a subsequent calendar year, shall pay a fee of twenty dollars at the time of obtaining such license which shall be credited into the fund. Except for assessments paid into the fund as provided in subsection 2 of this section, any person obtaining a broker's or ~~salesman's~~ ~~salesperson's~~ license for the first time which becomes effective for the calendar year 1978 or for a subsequent calendar year, shall pay the fee of twenty dollars into the fund only once.
2. If, on June thirtieth of any year, following the establishment of the real estate education, research, and recovery fund, the amount remaining in the fund is less than sixty thousand dollars, every licensed real estate broker and ~~salesman salesperson~~, when renewing ~~his~~ that individual's license, shall pay, in addition to the annual renewal fee, a sum not to exceed twenty dollars, which shall have been determined by the commission to be sufficient to restore the balance in the fund to at least sixty thousand dollars.

SECTION 16. AMENDMENT. Section 43-23.2-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23.2-09. Repayment to fund. Should the commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or ~~salesman salesperson~~, the license of the broker or ~~salesman salesperson~~ shall be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker or ~~salesman salesperson~~ shall be granted reinstatement until ~~he has~~ having repaid in full, plus interest at the rate of four percent a year, the amount paid from the fund on ~~his~~ that person's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this chapter.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 467

SENATE BILL NO. 2322  
(Goetz)

### REAL ESTATE LICENSE STUDY REQUIREMENTS

AN ACT to amend and reenact section 43-23-08 of the North Dakota Century Code, relating to license standards for real estate brokers and salesmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 43-23-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08. License standards.

1. Licenses and the renewals thereof shall be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker, a real estate salesman, or mortgage broker in such manner as to safeguard the interest of the public, and whose real estate license or mortgage broker license has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.
2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesman's license must be at least eighteen years of age.
3. Every applicant for a license as a real estate broker:
  - a. Shall have been actively engaged as a licensed real estate salesman for a period of at least one year preceding the date of application, which, beginning July 1, 1979, shall be increased to two years; or
  - b. Shall have had experience as determined by the commission to be substantially equal to that which a licensed real estate salesman would ordinarily receive during a period of one year, which, beginning July 1, 1979, shall be increased to two years.
4. Beginning July 1, ~~1977~~ 1992, each applicant for a ~~broker's salesman's~~ license shall be required to must have successfully completed at least ~~sixty~~ sixty three classroom hours in a course of study approved by the commission, and ~~beginning July 1, 1979,~~ each applicant ~~shall be required to~~ for a broker's license must have successfully completed at least ninety an additional sixty classroom hours in a course of study approved by the commission.

\* NOTE: Section 43-23-08 was also amended by section 4 of House Bill No. 1206, chapter 466.

As used throughout this section, the term "classroom hours" shall mean the actual time during such course of study that the class is actually in session.

5. ~~After July 1, 1977, each salesman licensee, as a condition precedent to obtaining a license renewal, shall have successfully completed prior to the first license renewal period which occurs after twelve months from the date that the initial license has been granted, at least thirty classroom hours in a course of study approved by the commission.~~
6. If the commission shall find that an applicant could not acquire employment as a licensed real estate salesman because of conditions existing in the area where he resides, then the experience requirements established in subdivisions a and b of subsection 3 may be waived by the commission. The educational requirements of subsection 4 may not be waived by the commission, but guidelines may be established whereby applicants who have engaged in certain educational courses of study which are closely related to the real estate profession may be deemed to have satisfied this requirement.
- ~~7.~~ 6. The commission may adopt reasonable rules and regulations pursuant to the provisions of chapter 28-32 relative to procedures for licensing, approval of coursework, and for the type of certification or proof of coursework completion that must be submitted.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 468

HOUSE BILL NO. 1176  
 (Committee on Industry, Business and Labor)  
 (At the request of the Real Estate Commission)

### REAL ESTATE LICENSE RENEWAL

AN ACT to amend and reenact sections 43-23-08.2 and 43-23-13.1 of the North Dakota Century Code, relating to renewal and cancellation of licenses of real estate brokers and salesmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 43-23-08.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, 1984, and every three years thereafter, each applicant for renewal of a broker's or salesman's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than twenty-four hours of approved continuing education. If a broker or salesman will not have been licensed three years on the date he or she is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules promulgated 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 shall 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 shall 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 license shall 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 on or before the thirty-first day of December immediately preceding the year for which the license is issued. Any licensee failing to comply with this section shall not engage in any activity for which a license is required under this chapter, and any license not renewed by the thirty-first day of March of the year for which the license is issued shall be declared forfeit and canceled by the commission. The forfeiture and cancellation shall be performed without any notice to the licensee or any opportunity for hearing. Any person whose license has been forfeited and canceled and who desires relicensure shall be required to satisfy the application and examination requirements for prospective licensees in

\* NOTE: Section 43-23-08.2 was also amended by section 6 of House Bill No. 1206, chapter 466.

accordance with this chapter and rules and regulations of 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, shall be exempt from the requirements of this section.

\* SECTION 2. AMENDMENT. Section 43-23-13.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker, real estate salesman, or mortgage broker must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal of a real estate broker's, real estate salesman's, or mortgage broker's license shall be made must be accompanied by such certification as required by this chapter and rules and regulations of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than December thirty-first of each year after licensure. Failure to remit an annual renewal fee no later than December thirty first automatically cancels the license on January first of the subsequent year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee as provided in section 43-23-13 may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof after the January first when the license was canceled. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 43-23-13.1 was also amended by section 11 of House Bill No. 1206, chapter 466.

## CHAPTER 469

SENATE BILL NO. 2259  
(Lips)

### REAL ESTATE APPRAISERS

AN ACT to establish a North Dakota real estate appraiser qualifications and ethics board; to provide for the licensure and certification of real estate appraisers; to provide a penalty; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means a written communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.
8. "Apprentice appraiser" means a person who is in training to obtain a license as an appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.
10. "Certified appraiser" means a person who develops and communicates appraisals and who holds a valid permit as a certified appraiser.
11. "Licensed appraiser" means a person who holds a valid appraiser license.

12. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
13. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
14. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal foundation as adopted and modified by the board. The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.
15. "Valuation" means an estimate of the value of real estate or real property.

SECTION 2. North Dakota real estate appraiser qualifications and ethics board. The governor shall appoint the board. The board must consist of five members. One member must represent the public, one member must represent the financial industry, and three members must be appraisers, one of which is experienced in the appraisal of agricultural property. The appraiser members first appointed to the board must be members in good standing of an organization belonging to the appraisal foundation or have the equivalent of five years of full-time experience as an appraiser in this state. Thereafter, each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, the North Dakota credit union league, and the North Dakota league of savings institutions. Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising. The term of each member is five years, except that of the members first appointed, one shall serve for five years, one shall serve for four years, one shall serve for three years, one shall serve for two years, and one shall serve for one year. A member of the board continues to hold office until the appointment and qualification of a successor. The governor may remove a board member for cause. The members annually shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

SECTION 3. Powers and duties of the board.

1. The board, or its designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, and certified appraiser, determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this Act, and establish application procedures.
  - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.

- c. Approve or disapprove applications for licensure and certification, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals licensed and certified.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as it designates and maintain records of board activities.
  - f. Adopt rules necessary to carry out the requirements imposed by federal law.
2. The board, or its designated representative, may:
    - a. Promote research and conduct studies relative to real estate appraising and sponsor educational activities.
    - b. Contract for services necessary to carry out this Act.
    - c. Enter into reciprocity agreements with other states.

SECTION 4. Permit required - Exemptions. Except as provided in this section, beginning July 1, 1991, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser without first obtaining a permit as provided in this Act. This Act does not apply to a licensed real estate broker or salesman who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This Act does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

SECTION 5. Permit process. An individual who desires to engage in the practice of real estate appraisal shall apply for a permit on forms prescribed by the board and submit the required fee.

SECTION 6. Classes of permits. The board may issue license and certification permits for appraisers.

1. An apprentice appraiser may assist a licensed or a certified appraiser in the performance of an appraisal assignment.
2. A licensed appraiser must meet the minimum requirements established by the board for a permit relating to licensed appraisers.
3. A certified appraiser must meet the appraisal foundation minimum requirements for a permit relating to the appraisal of all types of real property.

SECTION 7. Examination requirement. The board shall issue a permit to practice as a licensed or a certified appraiser to an individual who has demonstrated the following qualifications through a written examination process:

1. Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.
2. Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.
3. Understanding of the uniform standards of professional appraisal practices.
4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.
5. Basic understanding of real estate law.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser.

#### SECTION 8. Application prerequisites.

1. An applicant for a permit as an apprentice appraiser must have a high school education or its equivalent and must successfully complete fifteen classroom hours related to the standards of professional practice and this Act.
2. An applicant for a permit to practice as a licensed appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal subcommittee and the board.
3. An applicant for a permit to practice as a certified appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal foundation and the board.

#### SECTION 9. Appraisal experience.

1. The board may issue a permit to practice as a licensed appraiser to an individual who possesses the minimum experience requirements established by the appraisal subcommittee and the board.
2. The board may issue a permit to practice as a certified appraiser to an individual who possesses the minimum experience requirements established by the appraisal foundation and the board. The board may require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.

SECTION 10. Term of permit. The term of a permit is one year from the date of issuance. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 11. Nonresident permit.

1. A nonresident applicant for a permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last known business address of the nonresident appraiser.
2. The board may issue a permit to a nonresident if the applicant agrees in writing to abide by this Act and to submit to the jurisdiction of the board.
3. The board shall issue a permit to practice to a nonresident who has complied with this section. The board may require the nonresident to pay a temporary appraiser's fee. The board shall determine the amount of the temporary fee and the duration of the temporary permit.
4. If the board determines that another state has substantially equivalent requirements and the board enters into a reciprocity agreement, an applicant from that state may obtain a permit to practice as either a licensed or certified appraiser upon application and payment of any required permit fee.

SECTION 12. Permit renewal. To renew a permit to practice as a licensed or a certified appraiser, the permittee shall apply to the board and pay the required fee. With the application for renewal, the appraiser shall present evidence of having completed the continuing education requirements for renewal. A person who has temporarily surrendered a permit may not act as an appraiser, but may reactivate a permit without an examination. That person is subject to disciplinary action and activation of an inactive permit may be subject to a denial by the board.

SECTION 13. Principal place of business. An appraiser shall notify the board of the address of the appraiser's place of business. Within twenty days of a change in the address of the place of business, the appraiser shall give written notification of the change to the board and pay the change of address fee.

SECTION 14. Permit number displayed with signature. An appraiser shall place the appraiser's permit number adjacent to the appraiser's signature on an appraisal report, contract, or other writing used by the appraiser in conducting appraisal activities.

SECTION 15. Use of designation. The terms "licensed appraiser" and "certified appraiser" may only be used to refer to an individual who holds a permit under this Act and may not be used following or immediately in connection with the name or signature of any other individual or person or in a manner that might be interpreted as referring to any other individual or person other than the individual who holds the permit. This section does not prohibit a licensed or certified appraiser from signing an appraisal report on behalf of a corporation, partnership, or firm.

SECTION 16. Action for fee. No claim for relief may be instituted in any court of this state for compensation for an act done or service rendered as either a licensed or a certified appraiser unless the appraiser held a permit to practice under this Act at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for a contemplated act or service as a licensed or a certified appraiser.

SECTION 17. Retention of records. A licensed or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the appraiser's services for appraisal work and all reports and supporting data assembled and formulated by the appraiser in preparing the reports. The period for retention of records applies to each engagement of the services of the appraiser and commences upon the date of the submission of the appraisal to the client unless, within that period, the appraiser is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The appraiser shall make available for inspection and copying by the board on reasonable notice all records required to be maintained.

SECTION 18. Standards of professional appraisal practice. A licensed and certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.

SECTION 19. Continuing education. Beginning July 1, 1992, and every three years thereafter, each applicant for renewal of a permit shall submit proof of participation in the minimum number of continuing education hours required and approved by the board. The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.
2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.
3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

SECTION 20. Fees. The board may charge apprentice, licensed, and certified permittees and educational providers or promoters reasonable fees to help offset costs of operating the board. The board shall establish the charges by rule.

SECTION 21. Disposition of fees. The board, or its designated representative, shall deposit all fees collected by the board in a separate account. Disbursements from the account may not exceed the moneys credited to it. The board's designated representative shall review and pay appropriate charges against the account for services provided to the board.

SECTION 22. Disciplinary proceedings.

1. The board may, and upon the verified complaint in writing of any person shall, investigate the activities of any person and may suspend or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the person has:
  - a. Procured or attempted to procure a permit by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or through fraud or misrepresentation.
  - b. Failed to meet the minimum qualifications established under this Act.
  - c. Paid money other than provided for by this Act to any member or employee of the board to procure a permit.
  - d. Been convicted, including a conviction based upon a plea of guilty or nolo contendere, of a felony or of a crime that is substantially related to the qualifications, functions, and duties of a person developing and communicating appraisals to others.
  - e. Performed an act involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially that person or another person, or with the intent to injure substantially another person.
  - f. Violated any standard for the development or communication of appraisals as provided in this Act.
  - g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
  - h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.
  - i. Willfully violated this Act or rules of the board.
  - j. Accepted an appraisal assignment when the employment is contingent upon the reporting of a predetermined estimate, analysis, or opinion, or where the fee is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.

- k. Violated the confidential nature of governmental records to which the person gained access through employment or engagement as an appraiser by a governmental agency.
- l. Had entry of a civil judgment against the person on grounds of fraud, misrepresentation, or deceit in the making of an appraisal.
2. In a disciplinary proceeding based upon a civil judgment, the appraiser must be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.

SECTION 23. Penalties. A person acting or purporting to act as a licensed or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this Act is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

SECTION 24. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary, to the North Dakota real estate appraiser qualifications and ethics board for the purpose of defraying the expenses of the board for the period beginning with the effective date of this Act, and ending June 30, 1993. Such sum appropriated as is accepted by the board must be returned to the general fund by June 30, 1993, to the extent funds are not returned to the general fund by June 30, 1993, the funds must be returned by June 30, 1995, with interest from fees collected by the board.

SECTION 25. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 470

HOUSE BILL NO. 1318  
(Representatives Jensen, R. Berg, Kelsch)  
(Senators Stenehjem, Traynor, Krebsbach)

### REAL ESTATE BROKER TRUST ACCOUNTS

AN ACT to provide for a real estate broker trust account program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Real estate trust account committee. The president of the North Dakota association of realtors, with the approval of the board of directors of the association, shall appoint a five-member real estate trust account committee. Three members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining two members may not be realtors. The term of office for members is three years, except that, as determined by lot, one realtor member first appointed shall serve for an initial term of one year, and one realtor member and one nonrealtor member first appointed shall serve an initial term of two years. No member may serve more than two successive three-year terms. Each member shall serve until a successor is appointed. A vacancy on the committee must be filled by appointment of a member to serve for the unexpired portion of the term. Members of the committee serve at the pleasure of the board of directors of the association.

SECTION 2. Powers and duties of the committee.

1. The real estate trust account committee shall implement and administer an interest on broker trust account program.
2. The committee is the sole recipient of the interest or dividends paid to the North Dakota association of realtors from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds. All funds received from the interest or dividends on real estate trust accounts and the income earned from investment of the funds must be maintained in accounts separate from other funds held by the association.
3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:
  - a. Providing housing and shelter to the homeless and poor.
  - b. Providing public education relating to needs of housing for the poor.
  - c. Improving available safe and decent housing.

4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.
5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.
6. Within one hundred eighty days after the effective date of this Act, the association shall adopt rules establishing guidelines and procedures for the operation of an interest on real estate trust account program, including:
  - a. Guidelines for identifying eligible applicants.
  - b. Procedures for submitting grant applications.
  - c. Guidelines for awarding grant applications.
  - d. Procedures for accounting for the expenditure of grant funds by the recipient.

Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.

7. Immediately after the effective date of this Act, the real estate trust account committee shall take any action necessary to obtain:
  - a. A private letter revenue ruling from the internal revenue service, holding that the interest earned on funds deposited in a real estate trust account and paid to the committee are not includable in the gross income of either the client or third person who owns the funds, or of the broker who deposited the funds, and that neither the depository institution nor the broker is required to report the payment of the interest on behalf of the client or third person.
  - b. Permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation in connection with a representation or transaction.

**SECTION 3. Officers.** The president of the board of directors of the North Dakota association of realtors, with the approval of the board, shall appoint a chairman and vice chairman of the real estate trust account committee. The committee may elect other officers as it deems appropriate and may specify their duties.

**SECTION 4. Director.** The real estate trust account committee may appoint an executive director of the real estate trust account committee on a full-time or part-time basis at the pleasure of the board. The executive director is entitled to receive compensation set by the committee. The

executive director, before entering upon the duties of the office, may be required to provide a surety bond in an amount determined by the committee. The executive director is responsible and accountable to the committee for the proper administration of this Act. The executive director may employ persons or expend money for services approved by the committee.

**SECTION 5. Disposition of funds upon dissolution.** If the real estate trust account committee is discontinued, any funds under control of the committee must be transferred to its successor entity qualifying under the Internal Revenue Code, if any, for distribution for the purposes specified under section 2 of this Act or, if there is no successor, to the general fund of the state real estate commission's research, recovery, and education fund.

**SECTION 6. Preserving identity of funds and property of a client.**

1. All funds of clients paid to a real estate broker, including advances for costs and expenses, must be deposited in one or more identifiable interest-bearing trust accounts maintained as required by section 43-23-14.1.
2. Each real estate broker's trust account must be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation, and selected by the broker in the exercise of ordinary prudence unless otherwise agreed upon by the parties to the real estate transaction as provided by rule by the real estate commission. Interest-bearing trust funds must be placed in accounts in which withdrawals or transfers may be made by the depositing broker or realty firm without delay, subject only to any notice period that the depository institution is required to reserve by law or regulation.
3. The broker shall direct the depository institution to:
  - a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;
  - b. Transmit with each remittance to the association a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and
  - c. Transmit a copy of the statement to the depositing broker.
4. Every licensed real estate broker shall maintain on a current basis, records sufficient to demonstrate compliance with the laws and rules governing the interest-bearing trust account activities.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 471

SENATE BILL NO. 2311  
(Traynor)

### REFLEXOLOGY

AN ACT to amend and reenact section 43-25-02 of the North Dakota Century Code, relating to the definition of massage therapist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage establishment" means any place of business where one or more of the subjects and methods of treatments defined in this section are administered or used.
3. "Massage therapist" means a person who practices or administers any of the following subjects and who has studied the underlying principles of anatomy and physiology generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands and includes such modalities as acupressure, ~~reflexology~~, and polarity and, after July 1, 1993, massage includes reflexology. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists may not diagnose or treat classified diseases, practice spinal or other joint manipulations, or prescribe or administer vitamins.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 472

SENATE BILL NO. 2208  
(Committee on Agriculture)  
(At the request of the State Board of  
Veterinary Medical Examiners)

### VETERINARIAN LICENSING

AN ACT to amend and reenact sections 43-29-01, 43-29-04, 43-29-06, 43-29-07, 43-29-08, 43-29-09, 43-29-11, 43-29-12, subsections 1 and 8 of section 43-29-13, subsection 8 of section 43-29-14, section 43-29-15, and subsections 1 and 3 of section 43-29-16.1 of the North Dakota Century Code, relating to licensing of veterinarians, the issuance of a limited specialty license and graduate veterinary technicians, fees, the definition of veterinary medicine, the excepted practices, the refusal, suspension, and revocation of license, hearing and appeal, and the abandonment of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-01 of the North Dakota Century Code is amended and reenacted as follows:

43-29-01. Purpose of the chapter. This chapter shall be deemed an exercise of the police powers of the state of North Dakota acting through the legislative assembly to the end that the general welfare of the agricultural public, the livestock industry, and the people as a whole will be preserved and enhanced through the control and supervision hereby vested in the North Dakota state board of veterinary medical examiners, in licensing of veterinarians, defining their scope of activity in treatment of livestock, fixing their responsibility in the conduct of their practice, listing the requirements necessary to pass an inspection of their facilities, listing of the educational requirements necessary for licensing renewal, listing of the rules of professional conduct, defining the handling of abandoned animals, defining the duties and conduct of graduate ~~animal~~ veterinary technicians, and preventing unqualified persons from engaging in veterinary practice by instituting the necessary legal proceedings for the law's proper enforcement.

SECTION 2. AMENDMENT. Section 43-29-04 of the North Dakota Century Code is amended and reenacted as follows:

43-29-04. Record of proceedings of board - Register of applicants kept by board - Records and register as evidence. The state board of veterinary medical examiners shall keep a record of all its proceedings and ~~also a record or~~ register of applicants for licenses showing ~~as to the name of each such applicant his name,~~ the time spent by him each applicant in the study and practice of veterinary medicine, surgery, or dentistry, and the name and location of the school, college, or university which granted him the applicant a degree or diploma. Such books and records shall be prima facie evidence of the matters recorded therein.

SECTION 3. AMENDMENT. Section 43-29-06 of the North Dakota Century Code is amended and reenacted as follows:

43-29-06. Graduation from recognized school and certificate or permit from board required - Application for license. No person shall practice, or hold himself out as a practitioner in veterinary medicine, surgery, or dentistry, or any department thereof, unless he is a graduate. Only those persons who are graduates of the veterinary course offered in a veterinary school or in a college, or university recognized by the board, nor unless he and who possesses a certificate or permit issued by the state board of veterinary medical examiners which is in full force and effect may hold themselves out or engage in the practice of veterinary medicine, surgery, or dentistry, or any department thereof.

Any person qualified under the provisions of this chapter, desiring to begin the practice of veterinary medicine or veterinary surgery in the state of North Dakota, shall make application to said board for license to do so. Such application shall be made at least thirty days prior to the meeting of the board. The board shall give public notice of the time and place for the examination.

SECTION 4. AMENDMENT. Section 43-29-07 of the North Dakota Century Code is amended and reenacted as follows:

43-29-07. Application for license - Fees for examination and registration - Fees not to be returned - Renewal fees - Certificate of registration - Roster of registered veterinarians - Change of address - Renewal of registration upon forfeiture. Any person desiring a license to practice veterinary medicine in this state shall make written application for licensing to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota veterinary medical examining board a fee of fifty dollars. Fees shall not be returned, except by action of the board. If the license is granted, the licensee shall pay on or before the date set out in this section, for such time as ~~he~~ the licensee shall continue practice, an annual registration fee as determined by the board, based on the financial needs of the board. The renewal registration fee shall be paid by all licensed veterinarians.

All veterinarians actually engaged and employed as such by the state, county, city, or by any corporation, firm, or individual shall be deemed to be practicing veterinary medicine and shall secure a state license or certificate of qualification issued by the board.

Each person licensed by the board shall on or before the first day of July of each calendar year be required to pay the annual renewal registration fee to the executive secretary. Before the first day of June of each calendar year the executive secretary of the board shall send a notice to each veterinarian who holds a license to practice veterinary medicine in the state, whether resident or not, at ~~his~~ that person's last address, that ~~his~~ the annual renewal registration fee is due on or before the first day of July.

The executive secretary of the board shall issue a certificate of registration upon the payment of the required fee and publish biennially for proper distribution a roster of all veterinarians registered in the state of North Dakota, as soon as the registration for each two-year period is completed.

Each veterinarian licensed by the board, whether a resident or not, shall notify the secretary of any change in his that person's office address or employment within sixty days after such change has taken place. Any person licensed to practice veterinary medicine after the fifteenth day of April, or any person issued a temporary permit to practice veterinary medicine after that date, is exempt from this requirement to pay the annual registration fee until the first day of July of the year following licensure.

Registration shall be deemed a condition precedent to the practice of veterinary medicine and surgery in this state, and a certificate of registration currently in effect must be on display at all times in the office of each veterinarian engaged in active practice.

Any person registered under this chapter who may have forfeited his registration by nonpayment of fees may renew the same within one year without examination by paying such fees.

The board may by rule waive the payment of the registration fee of a licensed veterinarian during the period when he the veterinarian is on active duty in connection with any branch of the armed forces of the United States, not to exceed the term of three years or the duration of the national emergency, whichever shall last occur.

SECTION 5. AMENDMENT. Section 43-29-08 of the North Dakota Century Code is amended and reenacted as follows:

43-29-08. Certificate of qualification issued to applicants passing examination - Conclusiveness of certificate - Reexamination. The board shall issue a certificate of qualification to each applicant who passes such examination as the board may require and who is qualified under the provisions of this chapter. Such certificate shall be signed by the president and the executive secretary of the board and shall remain in force upon payment of the renewal registration fee becoming due thereafter, and so long as the holder complies with the provisions of this chapter. Notwithstanding the payment of such fee, his the veterinarian's license may be suspended or revoked as provided hereinafter in this chapter.

Any applicant for license who shall fail to satisfy the board of veterinary medical examiners as to his that applicant's qualifications may, upon application, be reexamined within not less than six months upon payment of an additional fee of fifty dollars.

SECTION 6. AMENDMENT. Section 43-29-09 of the North Dakota Century Code is amended and reenacted as follows:

43-29-09. Permit to practice issued by executive secretary of board - Limited specialty license - Graduate ~~animal~~ veterinary technicians. Any person who desires to practice veterinary medicine, surgery, or dentistry may apply to the executive secretary of the state board of veterinary medical examiners for a temporary permit to practice if he the applicant possesses a degree or diploma showing that he is the applicant to be a graduate of the veterinary course offered in a veterinary school or in a college, or university recognized by the board. Upon the payment of fifty dollars by the applicant, twenty-five dollars shall be applied toward the examination fee, but shall be declared forfeit if the applicant fails to present himself appear at the next scheduled examination. No temporary permit shall be issued to any applicant if he who has previously failed the examination. The

executive secretary, if ~~he is~~ satisfied that the applicant is a qualified and a suitable person, and with the approval of the president of the board, shall issue ~~to him~~ a permit to practice until the next examination is offered by the board. Such permit shall have the same force as a certificate from the board, but shall expire upon the adjournment of the next meeting thereof at which an examination is held.

Senior veterinary students who practice in the office of, and under the direct supervision of, a licensed veterinarian must obtain a temporary permit to practice veterinary medicine in this state. This temporary student permit shall not exceed four months from its date of issuance and will be granted without payment of a fee.

The board may issue a limited specialty license for the practice of that specialty in this state to a veterinarian, licensed in another state, who has passed a nationally recognized specialty board exam and who otherwise meets the qualifications to practice in this state. All limited specialty licenses regardless of when issued, expire on June thirtieth of each year and may be renewed in the discretion of the board. All veterinarians holding a limited specialty license are subject to the provisions of this chapter during the term of the license. Fees for a limited specialty license are the same as provided for a regular license.

The board shall adopt rules for the training, certification, and limits of activity for assistants and ~~animal~~ veterinary technicians being trained and employed under the direct supervision and responsibility of a licensed veterinarian. All ~~animal~~ veterinary technicians shall be registered with and subject to requirements established by the board. As used in this chapter, ~~an animal~~ a veterinary technician is a paramedical person who has had further training of at least ~~one year, preparing him two years of preparation~~ for veterinarian related employment in a position between the professional doctor and the animal attendant levels. ~~He~~ A veterinary technician must be trained and knowledgeable in the care and handling of animals, the basic principles of normal and abnormal life processes, and the routine laboratory and clinical procedures. Primarily, ~~his~~ the work of a veterinary technician shall be to assist veterinarians, biological researchers, and other veterinary scientists.

SECTION 7. AMENDMENT. Section 43-29-11 of the North Dakota Century Code is amended and reenacted as follows:

43-29-11. Fees deposited with state treasurer - Separate fund - Vouchers. All moneys and fees collected or received by the board under the provisions of this chapter shall be deposited with the state treasurer to be held ~~by him~~ for all legitimate expenses of the board. The state treasurer shall keep such moneys in a separate fund continued from year to year and shall disburse the same only on warrants drawn against such fund by the president or the executive secretary of the board.

SECTION 8. AMENDMENT. Section 43-29-12 of the North Dakota Century Code is amended and reenacted as follows:

43-29-12. Veterinary medicine defined. Any person is conclusively presumed to practice veterinary medicine, surgery, and dentistry, and the various branches thereof when ~~he does any one of the following~~:

1. Represents himself as There is any representation that the person is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.
2. Diagnoses The person diagnoses or prescribes a drug, medicine, appliance or application or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, or bodily injury or disease of animals.
3. Administers The person administers a drug, medicine, appliance or application or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, or bodily injury or disease of animals, except where such drug, medicine, appliance, or application or treatment is administered at the direction and under the direct supervision of a veterinarian licensed under this chapter.
4. Performs The person performs a surgical operation upon an animal.
5. Performs The person performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock.
6. Uses The person uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry. Such use shall be prima facie evidence of the intention to represent himself that person as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry.

SECTION 9. AMENDMENT. Subsections 1 and 8 of section 43-29-13 of the North Dakota Century Code are amended and reenacted as follows:

1. Those who administer to livestock, the title to which rests in himself themselves, or in his 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.
8. Those who render auxiliary or supporting assistance under the responsible supervision of a North Dakota licensed veterinarian, such as veterinary aids, nurses, laboratory technicians, animal veterinary technicians, interns, or other employees of such licensed practitioners.

SECTION 10. AMENDMENT. Subsection 8 of section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

8. Failure of the licensee to keep his the premises used in the licensee's practice in a reasonably clean and sanitary condition, and failure to use reasonably sanitary methods in the practice of veterinary medicine.

SECTION 11. AMENDMENT. Section 43-29-15 of the North Dakota Century Code is amended and reenacted as follows:

43-29-15. Hearing on charges - Appeal. Any person may prefer charges on any of the grounds as set forth in subsections 1 to 11 of section 43-29-14 by filing with the board in writing a sworn statement setting forth the specific charges upon which the complaint is made. Upon receiving any such complaint the board shall give at least twenty days' notice to the person complained about of the time and place for hearing thereon, together with a copy of the complaint filed, and after hearing all evidence and testimony presented thereon, the board shall have the power to revoke, or suspend for a limited time, the license and registration certificate of any registrant found guilty by the board of improper conduct on any of the grounds as set forth in subsections 1 to 11 of section 43-29-14. Any ~~person~~ licensee whose license has been revoked by the board may within thirty days thereafter upon written notice to the board appeal to the district court in the county of ~~his~~ the licensee's residence for a hearing de novo of the charges on which his license was revoked. The ~~registrant~~ licensee shall have the right at any such hearing to be represented by counsel, to call witnesses ~~in his behalf~~, and to cross-examine adverse witnesses. Any appeal regarding a limited specialty license must be made to the Burleigh County district court.

Any person whose license has been revoked may apply to the board for reinstatement and relicense, and if the board is satisfied that such conduct will be discontinued may reissue a license to such person.

SECTION 12. AMENDMENT. Subsections 1 and 3 of section 43-29-16.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Any animal placed in the custody of a licensed doctor of veterinary medicine for treatment, boarding, or other care, which shall be abandoned by its owner or ~~his~~ its owner's agent for a period of more than ten days after a written notice, by registered or certified letter, return receipt requested, is given to the owner or ~~his~~ its owner's agent at ~~his~~ the last known address, may be turned over to the custody of the nearest humane society or dog pound in the area or disposed of as such custodian may deem proper.
3. For the purpose of this section, the term "abandoned" shall mean to forsake entirely or to neglect or refuse to provide or perform the care and support of an animal by its owner or ~~his~~ its owner's agent; such abandonment shall constitute the relinquishment of all rights and claim by the owner of such animal.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 473

SENATE BILL NO. 2304  
(Senators Stenehjem, Mathern, Evanson)  
(Representatives Larson, Jensen)

### PSYCHOLOGIST CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-32 of the North Dakota Century Code, relating to continuing education requirements for psychologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board shall adopt rules establishing requirements for the continuing education of psychologists.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 474

HOUSE BILL NO. 1235  
(Carlisle)

## HEARING INSTRUMENT DISPENSERS

AN ACT to amend and reenact sections 43-33-01, 43-33-02, 43-33-02.1, 43-33-03, 43-33-04, 43-33-06, 43-33-07, 43-33-08, 43-33-09, 43-33-10, 43-33-11, 43-33-12, 43-33-13, 43-33-14, 43-33-15, and 43-33-17 of the North Dakota Century Code, relating to the board of hearing instrument dispensers; to repeal sections 43-33-05 and 43-33-16 of the North Dakota Century Code, relating to the board of hearing instrument dispensers and licensing of hearing instrument dispensers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-33-01 of the North Dakota Century Code is amended and reenacted as follows:

43-33-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. ~~"Department" shall mean office of attorney general charged with administering the chapter in the state.~~ "Board" means the board of hearing instrument dispensers.
2. ~~"Hearing instrument" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries, cords, and earmold tubing.~~
- 2- 3. ~~"License" shall mean means a license issued by the state under this chapter to hearing aid dealers and fitters instrument dispensers.~~
- 3- ~~"Trainee permit" shall mean a temporary permit issued while the applicant is in training to become a licensed hearing aid dealer and fitter.~~
- 4- ~~"Board" shall mean the board for licensing hearing aid dealers and fitters.~~
- 5- ~~"Hearing aid" shall mean any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries and cords.~~
- 6- 4. "Practice of fitting and dealing in hearing aids" shall mean dispensing hearing instruments" means the measurement of human hearing to determine hearing loss by means of an audiometer or by

any means solely for the purpose of making selections, adaptations, repairs, or sale of hearing aids instruments. The term also includes the making of impressions for earmolds. A dealer dispenser, at the request of a physician or member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

- 7- 5. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dealers dispensers.
6. "Trainee permit" means a temporary permit issued while an applicant is in training to become a licensed hearing instrument dispenser.

SECTION 2. AMENDMENT. Section 43-33-02 of the North Dakota Century Code is amended and reenacted as follows:

43-33-02. License required to sell or fit hearing aids instruments.

1. No person shall A person may not engage in the sale of or practice of fitting hearing aids instruments or display a sign or in any other way advertise or represent himself as a that that person who practices the fitting and sale of hearing aids after July 1, 1969, instruments unless he that person holds an unsuspended, unrevoked license issued by the department board as provided in this chapter. The license required by this chapter shall must be conspicuously posted in his the licensee's office or place of business. Duplicate licenses shall must be issued by the department board to valid license holders operating more than one office without additional payment for a fee determined by the board. A license under this chapter shall confer confers upon the holder the right to select, fit, and sell hearing aids instruments, and the right to conduct any necessary hearing testing incident to the selecting, fitting, and selling of hearing instruments.
2. Nothing in this This chapter shall does not prohibit a corporation, partnership, trust, association or other like organization person maintaining an established business address from engaging in the business of selling or offering for sale hearing aids instruments at retail without a license provided that if that person employs only properly licensed natural persons individuals in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations, or other like organizations persons shall file annually with the board a list of all licensed hearing aid dealers and fitters instrument dispensers directly or indirectly employed by it. Such organizations Those persons shall also file with the board a statement on a form approved by the board that they submit themselves to the rules and regulations of the department board and the provisions of this chapter which the department shall deem applicable to them.

SECTION 3. AMENDMENT. Section 43-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-33-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall does not disqualify a person from licensure under this chapter unless the department board determines that the offense has a direct

bearing upon a person's ability to serve the public as a hearing aid dealer instrument dispenser, or determines that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-33-03 of the North Dakota Century Code is amended and reenacted as follows:

43-33-03. Receipt required to be furnished to a person supplied with hearing aid instruments.

1. Any person who practices the fitting and sale of hearing aids instruments shall deliver to each person supplied with a hearing aid instrument a receipt which shall contain that contains the licensee's signature and show his, the licensee's business address and, the number of his the licensee's certificate, together with specifications as to the make and model of the hearing aid instrument furnished, and the full terms of the sale clearly stated. If an aid which instrument that is not new is sold, the receipt and the instrument's container thereof must be clearly marked as "used" or "reconditioned" whichever is applicable, with the terms of guarantee, if any.
2. Such The receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter instrument dispenser in connection with the fitting and selling of this hearing aid(s) instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice.

SECTION 5. AMENDMENT. Section 43-33-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-04. Persons and practices not affected. This chapter is does not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided this instruments if the person or organization employing such that person does not sell hearing aids or accessories thereto instruments.

SECTION 6. AMENDMENT. Section 43-33-06 of the North Dakota Century Code is amended and reenacted as follows:

43-33-06. Issuance of license.

1. The department board shall register each applicant without discrimination or examination who satisfactorily passes the experience requirement as provided in section 43-33-05 or if the applicant passes an examination as provided in section 43-33-07, and upon the applicant's payment of fifty dollars a fee as established by the board, shall issue to the applicant a license signed by the department secretary of the board. The license shall be is effective until January thirtieth of the year following the year in which it is issued the expiration date stated on the license and identification card.

2. Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice to fit and sell hearing aids instruments, and that such the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to dispense and fit hearing aids instruments, the department board may issue certificates of endorsement to applicants who hold current, unsuspended and unrevoked certificates or licenses by examination to fit and sell hearing aids instruments in such the other state or jurisdiction. No such applicants The board may not issue a license to an applicant for a certificate of endorsement if the applicant's license or certificate from the other state or jurisdiction was obtained by experience. An applicant for a certificate of endorsement pursuant to this subsection shall may not be required to submit to or undergo a qualifying examination, but the applicant must pay the fees required by this chapter the board. The holder of a certificate of endorsement shall must be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement shall must be the same as the fee for an initial license. Fees, grounds for renewal, and procedures for the suspension and revocation of certificates of endorsement shall must be the same as for renewal, suspension, and revocation of a license.

SECTION 7. AMENDMENT. Section 43-33-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-07. License by examination.

1. Applicants who do not meet the experience qualification on July 1, 1969, may obtain a license by successfully passing a qualifying examination, provided if the applicant:
  - a. Is at least eighteen years of age.
  - b. Is of good moral character.
  - c. Has an education equivalent to a four-year course in an accredited high school.
  - d. Is free of contagious or infectious disease.
2. The applicant for license by examination shall appear at a time, place, and before such persons as the department may designate board designates, to be examined by means of written and practical tests in order to demonstrate that the applicant is qualified to practice the fitting and sale of hearing aids instruments. The examination administered as directed by the board constituting standards for licensing may not be conducted in such a manner that college training is required in order to pass the examination. Nothing in this The examination may not imply that the applicant must possess the degree of medical competence normally expected of physicians.

3. The department board shall give examinations once a year at a time and place ~~to be~~ designated by the board, and may give more frequent examinations if deemed necessary by the board.
4. In addition to all other fees, the fee for an examination to determine qualifications for license must be set by the board.

SECTION 8. AMENDMENT. Section 43-33-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-08. Temporary trainee permit.

1. ~~After July 1, 1969, an~~ An applicant who fulfills the requirements regarding age, character, education, and health as set forth in ~~subsection 1 of~~ section 43-33-07, may obtain a trainee permit upon application to the department board. Previous experience, or a waiting period ~~shall~~ may not be required to obtain ~~this~~ a trainee permit.
2. Upon receiving an application ~~as provided under this section and accompanied by a fee of thirty five dollars, the department as established by the board,~~ the board shall issue a trainee permit ~~which shall enable that permits~~ the applicant to engage in the training of fitting and sale of hearing ~~aids~~ instruments for a period of one year under the direct supervision of a person holding a valid hearing ~~aid dealers and fitters instrument dispenser~~ license. The trainee shall train in the same place of business as that of the supervisor and ~~shall be required to have fulfilled must complete~~ at least thirty hours of book and visual aid training ~~during office hours and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before his the trainee's first public contact alone.~~ A trainee ~~shall not be permitted to~~ may not deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training the trainee must spend one day per week in the office or place of business ~~within any period of sixty days, and one week with the supervisor within any period of sixty days.~~ The trainee may not make any sale of a hearing ~~aid~~ instrument without first consulting with ~~his~~ the supervisor and obtaining the supervisor's approval for ~~such the~~ the sale.
3. If a person who holds a temporary trainee permit ~~under this section~~ has not successfully passed the licensing examination during ~~this~~ the one-year period from the date of issuance, the temporary trainee permit may be renewed or reissued once upon payment of a ~~twenty five dollar~~ fee ~~established by the board.~~
4. A supervisor may not have more than three trainees under supervision at a time.

SECTION 9. AMENDMENT. Section 43-33-09 of the North Dakota Century Code is amended and reenacted as follows:

43-33-09. Scope of examination. The qualifying examination provided in section 43-33-07 ~~shall consist~~ consists of:

1. Tests of knowledge in the following areas as they pertain pertaining to the fitting and sale of hearing aids instruments:
  - a. Basic physics of sound-;
  - b. The anatomy and physiology of the ear-;
  - c. The function of hearing aids- instruments;
  - d. Elementary audiology-; and
  - e. Any other requirements established by the board.
2. Practical tests of proficiency in the following techniques as they pertain pertaining to the fitting of hearing aids instruments:
  - a. Pure tone audiometry, including air conduction testing and bone conduction testing-;
  - b. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing-;
  - c. Masking when indicated-;
  - d. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid- instrument;
  - e. Taking earmold impressions-;
  - f. Hearing instrument modification technique; and
  - g. Any other requirements established by the board.

SECTION 10. AMENDMENT. Section 43-33-10 of the North Dakota Century Code is amended and reenacted as follows:

43-33-10. Notice to department board of place of business - Notice to holders of license - How given by department board.

1. A person who holds a license shall notify the department board in writing of a regular address of the place or places where he the person engages or intends to engage in the fitting or the sale of hearing aids instruments.
2. The department board shall keep a record of the place of business of persons who hold licenses.
3. Any notice required to be given by the department board to a person who holds a license shall must be mailed to him by certified mail at the address of the last place of business of which he the person has notified the department board.
4. The department board shall keep a record of the trainees, their place of training, and their supervisors.

SECTION 11. AMENDMENT. Section 43-33-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-11. Annual renewal of license - Fees - Effect of failure to renew. Each person who engages in the fitting and sale of hearing aids instruments shall annually, on or before January thirtieth the expiration of the person's license, pay to the department a fee of seventy five dollars board the proper fees, together with a certificate showing attendance for a minimum of two days at a school or seminar, ten hours of continuing education per calendar year at schools or seminars approved by the board as defined by rule, pertaining to the fitting and sales of hearing aids instruments, for a renewal of his a license and shall keep such license conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate licenses shall be issued by the department for posting in each location. A thirty-day grace period shall must be allowed after January thirtieth, during which time licenses the expiration of a license when a license may be renewed on payment of a fee of one hundred dollars the proper fees together with the certificate of annual training continuing education to the department board. After expiration of the grace period, the department board may renew such licenses a license upon the payment of one hundred twenty five dollars the proper fees together with the certificate of annual training continuing education to the department board. No A person who applies for renewal, whose license has expired, shall may not be required to submit to any an examination as a condition to renewal, provided such if the renewal application is made within two years from the date of such the expiration and is accompanied with a certificate of training as herein designated continuing education during the twelve months immediately preceding the date of application.

SECTION 12. AMENDMENT. Section 43-33-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-12. Complaint procedure - Grounds for revocation or suspension of license - Appeals.

1. Any person wishing to make a complaint against a licensee under this chapter shall reduce the same to writing and file this a written complaint with the department board within one year from the date of the action upon which the complaint is based. If the department board determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall may be suspended or revoked, it shall make an order fixing establish a time and place for a hearing and requiring order the licensee complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint and the order and copy of the complaint shall must be served upon the licensee at least twenty days before the date set for hearing, either personally or by registered mail sent to licensee's last known address. Continuances or adjournments of a hearing date shall must be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the department shall have the right to board may take depositions in advance of hearing and after service of the complaint and either may compel the attendance of witnesses by subpoenas issued by the department board. Either party taking depositions shall give at least five days' written notice to the other party of the time and

place of such depositions, and the other party ~~shall have the right to~~ may attend with counsel if desired and cross-examine.

2. Any person registered under this chapter may have his license revoked or suspended for a fixed period by the department. The board may revoke or suspend a person's license for any of the following causes:
- a. The conviction of an offense determined by the department board to have a direct bearing upon a person's ability to serve the public as a hearing ~~aid dealer~~ instrument dispenser, or the department board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. Procuring of a license by fraud or deceit practiced upon the department.
  - c. Unethical conduct. Unethical conduct means:
    - (1) Obtaining any fee or making any sale by fraud or misrepresentation.
    - (2) Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by this chapter.
    - (3) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
    - (4) Advertising a particular model or type of hearing aid instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
    - (5) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids instruments when that is not true, or using the word "doctor", "clinic", "audiologist" or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when such that is not accurate, except that the designation of "certified hearing aid audiologist" may be used when certification thereof has been conferred by and is in good standing with the national hearing aid society or use of the titles "hearing instrument specialist" or "board certified hearing instrument specialist" when the qualifying requirements have not been met through the national hearing aid society or national board for certification in hearing instrument sciences.

- (6) Habitual intemperance.
  - (7) Gross immorality.
  - (8) Permitting another to use ~~his~~ the person's license.
  - (9) Advertising a manufacturer's product or using a manufacturer's name or trademark ~~which~~ that implies a relationship with the manufacturer which does not exist.
  - (10) To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter instrument dispenser, or to influence persons to refrain from dealing in the products of competitors.
  - (11) Sale of a hearing aid instrument to a person without adequate and proper audiometric testing.
  - (12) Sale of a hearing aid instrument to a person where the need for a hearing aid instrument has not been established after adequate and proper audiometric testing.
- d. Conducting business while suffering from a contagious or infectious disease.
  - e. Engaging in the fitting and sale of hearing aids instruments under a false name or alias with fraudulent intent.
  - f. For any violation of the provisions of this chapter.
  - g. The fitting and sale of a hearing aid instrument to any person under eighteen years of age or younger unless within six months prior to before the fitting the person to be fitted has been examined by a physician and audiologist to determine whether or not there exist any physical deficiencies that would prohibit the effective use of a hearing aid instrument.
3. Appeals from suspension or revocation may be made under chapter 28-32.

SECTION 13. AMENDMENT. Section 43-33-13 of the North Dakota Century Code is amended and reenacted as follows:

43-33-13. Prohibited acts and practices. ~~No~~ A person ~~shall~~ may not:

1. Sell, barter or offer to sell or barter a license.
2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing aids instruments.
3. Alter a license with fraudulent intent.

4. Use or attempt to use as a valid license a license ~~which~~ that has been purchased, fraudulently obtained, counterfeited, or materially altered.
5. Willfully make a false statement in an application for a license or application for renewal of a license.
6. Advertise without giving the registered business or personal name and business address or telephone number of the person.

SECTION 14. AMENDMENT. Section 43-33-14 of the North Dakota Century Code is amended and reenacted as follows:

43-33-14. Powers and duties of department board. The ~~powers and duties of the department are as follows~~ board shall:

1. ~~To authorize~~ Authorize all disbursements and collect fees necessary to carry out ~~the provisions of~~ this chapter.
2. ~~To supervise~~ Supervise issuance of licenses ~~"by experience"~~ and prepare and administer qualifying examinations to test the knowledge and proficiency of applicants licensed by examination.
3. ~~To register~~ Register persons who apply to the department board and who are qualified to engage in the fitting and sale of hearing ~~aids~~ instruments.
4. ~~To purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in section 43-33-07-~~
- 5- ~~To issue~~ Issue and renew licenses.
- 6- ~~5. To suspend~~ Suspend or revoke licenses ~~in the manner provided.~~
- 7- ~~6. To designate~~ Designate the time and place for examining applicants.
- 8- ~~7. To appoint~~ Appoint representatives to conduct or supervise the examination.
- 9- ~~8. To make and publish~~ Adopt rules and regulations not inconsistent with the laws of this state which are necessary to carry out ~~the provisions of~~ this chapter.
- 10- ~~9. To appoint~~ Appoint or employ subordinate employees.

SECTION 15. AMENDMENT. Section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

43-33-15. Board of hearing ~~aid dealers and fitters instrument dispensers~~.

1. There ~~shall be~~ is established a board of hearing ~~aid dealers and fitters which shall guide, advise and make recommendations to the department handling the license under~~ instrument dispensers to carry out this chapter.

2. Members of the board ~~shall must~~ be residents of the state. The board ~~shall consist~~ consists of ~~four hearing aid dealers and fitters, two otolaryngologists, and instrument dispensers~~ who are ~~not audiologists or otolaryngologists, one otolaryngologist, two audiologists, and one consumer~~. Each ~~hearing aid dealer and fitter instrument dispenser~~ on the board ~~shall must~~ be primarily engaged as a ~~hearing aid dealer and fitter, shall have had no less than instrument dispenser, must have at least five years of experience in this state, and shall must~~ hold a valid license as a ~~hearing aid dealer, as provided under this chapter. Exception shall be the hearing aid dealers and fitters of the first board appointed who shall have had no less than five years' experience and shall have fulfilled all qualifications for "license by experience" as provided by this chapter~~ instrument dispenser.
3. ~~All~~ The governor shall appoint the members of ~~such the board shall be appointed by the governor. The term of office of each member shall be for is~~ four years, ~~excepting that the members of the first board appointed under this chapter, two shall be appointed for two years, two shall be appointed for three years, and two shall be appointed for four years. Before a member's term expires, the governor shall appoint a successor to assume his the member's duties at the expiration of his predecessor's the term. A vacancy in the office of a member shall must be filled by appointment for the unexpired term. The members of the board shall annually designate one member to serve as chairman and another to serve as secretary-treasurer. No member of the board may be reappointed to the board until at least one year after the expiration of his that person's second term of office.~~
4. ~~Each~~ Except for the secretary-treasurer, ~~each member of the board shall serve without compensation but he shall receive such except~~ mileage and travel expenses while engaged in the performance of the duties of ~~his the~~ office as is provided for ~~general~~ state employees. ~~The board shall establish the amount of compensation for the secretary-treasurer.~~

SECTION 16. AMENDMENT. Section 43-33-17 of the North Dakota Century Code is amended and reenacted as follows:

43-33-17. Meetings of board. The board shall meet not less than ~~once~~ twice each year at a place, day, and hour determined by the board. The board shall also meet at such other times and places as ~~may be requested by the department~~ are necessary.

SECTION 17. REPEAL. Sections 43-33-05 and 43-33-16 of the North Dakota Century Code are repealed.

SECTION 18. EFFECTIVE DATE. This Act becomes effective on October 1, 1991.

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 475

HOUSE BILL NO. 1519  
(Representatives Kroeber, Goffe, DeMers)  
(Senator Lindgren)

### ATHLETIC TRAINERS BOARD AUDITS

AN ACT to amend and reenact subsection 3 of section 43-39-02 of the North Dakota Century Code, relating to audits of the board of athletic trainers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-39-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The board each year shall elect one of its members as chairman and one as secretary-treasurer to the board. The board may make rules, in accordance with chapter 28-32 and not inconsistent with law, which may be necessary for the performance of its duties. The board may prescribe reasonable fees for application and examinations and for certificates of licensure. License fees shall be used for the purpose of paying the costs of per diem compensation and travel reimbursement to the board. In addition, fees and other moneys collected and received by the board shall be used for the purpose of implementing this chapter and may be used for continuing education purposes. The financial records of the board shall be audited ~~annually~~ once every two years. The audit is to be paid for out of the funds of the board.

Approved April 2, 1991  
Filed April 4, 1991