

OCCUPATIONS AND PROFESSIONS

CHAPTER 415

SENATE BILL NO. 2415
(Senators Goetz, Nething, Redlin)
(Representatives Wardner, Wentz, Wilkie)

ABSTRACTERS CONTINUING EDUCATION

AN ACT to amend and reenact subsection 4 of section 43-01-10 of the North Dakota Century Code, relating to continuing education requirements for abstracters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsection 4 of section 43-01-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The certificate of registration issued by ~~said the board under the provisions hereof shall~~ must recite, ~~among other things,~~ that the holder ~~thereof~~ has complied with this chapter relating to examination or otherwise, and ~~shall entitle~~ entitles the holder of ~~such the~~ certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority, ~~under the provisions of this chapter.~~ Certificates of registration must be issued upon the payment of a fee fixed by the board not exceeding one hundred dollars and ~~shall be~~ are valid for one year from the date ~~thereof~~ of issuance but ~~shall~~ must be renewed annually by ~~said the~~ board upon application within thirty days ~~prior to~~ before the expiration ~~thereof of the registration~~ upon a payment of a fee fixed by the board not exceeding one hundred dollars to the secretary-treasurer of the board. The board may issue temporary certificates of registration in its discretion. After the effective date of this Act, an applicant for renewal of a registration shall include with the application a report of any continuing education courses attended by the applicant during the previous year. The board shall adopt rules to establish and administer continuing education requirements.

Approved April 7, 1993
Filed April 8, 1993

¹ NOTE: Section 43-01-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 416

SENATE BILL NO. 2377
(Senators Krebsbach, Krauter)
(Representative Mahoney)

ABSTRACTERS' FEES

AN ACT to amend and reenact sections 43-01-15.1 and 43-01-18 of the North Dakota Century Code, relating to abstracters' fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-15.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request. An abstracter shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstracter shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstracter may charge a fee of one dollar and fifty cents, and no more. When requested to do so, an abstracter shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted.

SECTION 2. AMENDMENT. Section 43-01-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-18. Fees chargeable by abstracter. An abstracter may charge the following fees, and no more for making and certifying to an abstract:

1. For each entry on an abstract or continuation thereof, ~~four~~ five dollars.
2. For a complete certification covering the records of the several county offices, ~~fifty~~ sixty dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of ~~seven~~ nine dollars ~~and fifty cents~~, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.

4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of ~~seven~~ nine dollars ~~and fifty cents~~, for such premises in each additional block in excess of one, may be charged.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanics' liens and mechanics' lien notices, ~~two~~ three dollars ~~and fees charged to the abstractor by governmental agencies or governmental entities~~.
6. For all miscellaneous instruments, ~~one dollar and fifty cents~~ two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.
7. Such fees as may be fixed by special statute.

Approved March 25, 1993

Filed March 26, 1993

CHAPTER 417

SENATE BILL NO. 2071
(Industry, Business and Labor Committee)
(At the request of the State Board of Public Accountancy)

ACCOUNTANCY PRACTICE

AN ACT to provide for the issuance of certificates as certified public accountants and the issuance of permits to practice public accountancy, to regulate the practice of public accountancy in the public interest, and to establish a state board of accountancy and prescribe its powers and duties; and to repeal chapter 43-02.1 of the North Dakota Century Code, relating to public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Title. This Act may be cited as the "Accountancy Act of 1993".

SECTION 2. Purpose. It is the policy of this state, and the purpose of this Act, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. Public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information have demonstrated or maintained their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications, including certificate holders not in public practice, not be permitted to hold themselves out as having such special competence or to offer such assurance. Public interest requires that the professional conduct of persons licensed as having special competence in accountancy be regulated in all aspects of the practice of public accountancy. Public interest requires that a public authority competent to prescribe and assess the qualifications and to regulate the professional conduct of practitioners of public accountancy and certificate holders not in public practice be established and that the use of titles relating to the practice of public accountancy which are likely to mislead the public as to the status or competence of the persons using such titles be prohibited.

SECTION 3. Definitions. As used in this Act, unless the context requires otherwise:

1. "Board" means the state board of accountancy.
2. "Certificate" means a certificate as "certified public accountant" issued under section 5 of this Act or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.

4. "Licensee" means the holder of a certificate issued under section 5 of this Act, a permit issued under section 6 or 7 of this Act, or a certificate or permit issued under prior law.
5. "Permit" means a permit to practice public accountancy issued under section 6 or 7 of this Act, prior law, or corresponding provisions of the laws of other states.
6. "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or firm holding out to the public as a licensee, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.
7. "Practice review" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and are in the practice of public accounting and who are not affiliated with the person or firm being reviewed.
8. "Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is an accountant, auditor, or is in the business of accounting, or from the language of the report. "Report" includes any form of language that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.
9. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.
10. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

SECTION 4. State board of accountancy.

1. The state board of accountancy consists of five members appointed by the governor. Four members of the board must be residents of this state who hold certified public accountant certificates issued under the laws of this state and one member of the board must be a resident of this state who is a licensed public accountant under the laws of this state. When the number of licensed public accountants in this state drops below twenty-five, the licensed public accountant member requirement ceases to

apply, except that the licensed public accountant then serving on the board may complete that term of office and thereafter the board shall consist of five certified public accountants. The terms of office must be arranged so that only one term expires each year on June thirtieth. Successor board member appointments are for terms of five years. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. A vacancy on the board must be filled by appointment by the governor from a list of at least three nominees submitted by the appropriate nominating committee. Any member of the board whose certificate or permit is revoked or suspended automatically ceases to be a member of the board. The governor may remove any member of the board for neglect of duty or other just cause, after a hearing. No person who has served two consecutive complete terms is eligible for reappointment, but appointment to fill an unexpired term may not be considered a complete term for this purpose.

2. At its first meeting after June thirtieth in each year, the board shall organize by electing one of its members as president, one as secretary, and one as treasurer. The offices of secretary and treasurer may be held by one person. A majority of the board constitutes a quorum.
3. A member of the board is entitled to compensation in an amount to be fixed by the board for each day or portion of a day spent in the discharge of duties, mileage as provided under section 54-06-09, and reimbursement for actual and necessary expenses incurred in the discharge of official duties.
4. All expenses incident to examinations under this chapter, expenses of preparing and issuing certificates and licenses, travel expenses and other allowable expenses of the members of the board, and stationery, printing, clerk hiring, and other office expenses must be paid by the board from the fees collected by it, and no expense incurred under this chapter may be a charge against the funds of this state. Funds administered by the board may not revert to the state general fund.
5. The board has the following powers:
 - a. To administer oaths to all applicants or persons appearing before it in respect to investigations, examinations, or the issuance of certified public accountant certificates.
 - b. To conduct investigations and examinations and issue certificates and licenses to properly qualified accountants.
 - c. To determine the qualifications of all applicants.
 - d. To employ and establish the salary of an executive director and such other personnel as it deems necessary in administration and enforcement of this Act. The board may appoint committees or persons, including counsel, to advise or assist the board.
 - e. To take all action that is necessary and proper to effectuate the purposes of this chapter, including the power to sue and be sued in its official name as an agency of this state, to issue subpoenas to

compel the attendance of witnesses and the production of documents, to administer oaths, to take testimony, and to receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence. The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's responsibilities.

- f. The board may adopt rules governing its administration and enforcement of this chapter and the conduct of licensees, including:
- (1) Rules governing the board's meetings and the conduct of its business;
 - (2) Rules of procedure governing the conduct of investigations and hearings by the board;
 - (3) Rules specifying the educational qualifications required for the issuance of certificates under this chapter and the continuing professional education required for renewal of certificates and permits;
 - (4) Rules of professional conduct including rules relating to independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;
 - (5) Rules specifying actions and circumstances that must be deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;
 - (6) Rules governing the manner and circumstances of use, by holders of certificates who do not also hold permits under this Act, of the titles "certified public accountant", "CPA", "licensed public accountant", and "LPA";
 - (7) Rules regarding practice reviews that may be required to be performed under this Act; and
 - (8) Other rules the board deems necessary or appropriate for implementing this chapter.

SECTION 5. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any resident who meets the requirements of this section.
2. The board may refuse to grant a certificate on the grounds of a history of dishonest or felonious acts only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence

- upon which the determination was based, and a notice of the applicant's right of appeal.
3. The board shall issue a certificate to a holder of a certificate issued by another state, provided that that state extends similar reciprocity to the certificate holders of this state, and upon a showing that:
 - a. The applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this state;
 - b. The applicant:
 - (1) Meets all current requirements except residence in this state for issuance of a certificate, at the time application is made; or
 - (2) At the time of the issuance of the applicant's certificate in the other state, met all such requirements except residence then applicable in this state;
 - c. The applicant meets the requirements of section 6 of this Act, if applying for a permit.
 - d. The applicant has paid the applicable fees.
 4. The board shall issue a certificate to a holder of a recognized professional accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:
 - a. Meets the good character requirement of subsection 2;
 - b. Meets the substantial equivalent of the education requirements of subsection 5 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education or experience requirements then applicable in this state;
 - c. Has completed examinations generally equivalent to those prescribed under subsection 6;
 - d. Has satisfactorily completed any additional examinations that the board prescribes;
 - e. Has paid the applicable fees; and
 - f. Meets the requirements of section 6 of this Act, if applying for a permit.
 5. The education requirement for a certificate is as follows:
 - a. Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's

- own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.
- b. After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board rule to be appropriate.
6. The examinations required to be passed as a condition for the granting of a certificate must be in writing and must test the applicant's knowledge of the subjects of accounting and auditing. A grade of seventy-five percent is required in each subject to constitute a passing grade. The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the examinations, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties.
 7. An applicant must pass all sections of the examination provided for in subsection 6 in order to qualify for a certificate. If at a given sitting of the examination an applicant passes two or more but not all sections, then the applicant must be given credit for those sections passed and need not sit for reexamination in those sections, provided that:
 - a. The applicant wrote all sections of the examination at that sitting;
 - b. The applicant attained a minimum grade of forty percent on each section not passed at that sitting but this requirement does not apply to an applicant who has passed three sections at a given sitting;
 - c. The applicant passes the remaining sections of the examination within the six consecutive examinations given after the one at which the first sections were passed;
 - d. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections not yet passed; and
 - e. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of forty percent on sections written but not passed on such sitting.
 8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.

9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.
10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for each section of the examination or reexamination taken by the applicant.
11. A certificate of certified public accountant must be issued and renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.
12. The board may require examination of other related subjects as specified by rule.
13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized professional accounting designations, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized professional accounting designation by another state or jurisdiction.

SECTION 6. Permits to practice - Individual.

1. The board shall grant or renew permits to practice public accountancy to persons who possess a valid North Dakota certificate, or who are licensed public accountants of this state, and who make application and demonstrate their qualifications in accordance with this section.
2. Permits must be issued and renewed on an annual basis. Applications for permits must be made in the form the board specifies. The board shall grant or deny any application no later than ninety days after the application is filed in proper form. If the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied, or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which expires ninety days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever occurs first.
3. For issuance and renewal of a permit under this section an applicant must show completion of one hundred twenty hours of continuing professional education during the last three-year period, with a minimum of twenty-four hours each year. The board may prescribe by rule the content, duration, and organization of continuing professional education courses which contribute to the general professional competence of the applicant. The board may provide by rule for prorated continuing professional education requirements to be met by applicants whose certificates were issued less than three years before the permit issuance or renewal date. The board may also prescribe by rule special requirements to be met by applicants

for permit renewal whose prior permits lapsed before their applications for renewal and for those applicants who have received reciprocal certificates less than three years before the application for permit issuance or renewal.

4. The board shall charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.
5. Applicants for initial issuance or renewal of permits under this section shall in their applications list all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized professional accounting designations, and each holder of or applicant for a permit under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized professional accounting designation by another state or jurisdiction.

SECTION 7. Permits to practice - Firms.

1. Each firm that engages in the practice of public accounting must hold a firm permit to practice. The board shall grant or renew permits to practice public accountancy to firms that make application and demonstrate their qualifications in accordance with this section.
2. Permits must be issued and renewed on an annual basis. Applications for permits must be made in the form the board specifies. The board shall grant or deny any application no later than ninety days after the application is filed in proper form. If the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which expires ninety days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever occurs first.
3. An applicant for initial issuance or renewal of a permit to practice under this section must show that each partner, officer, or shareholder who regularly works in this state, and each employee who holds out as a licensee and who regularly works in this state, holds a valid individual permit to practice issued under section 6 of this Act or the corresponding provision of prior law and that each other partner, officer, or shareholder holds a certificate or similar professional accounting designation and is licensed to practice public accountancy in some other state or jurisdiction.
4. An applicant for initial issuance or renewal of a permit to practice under this section is required to register each office of the firm within this state with the board and to show that each office is under the charge of a person holding a valid permit to practice issued under section 6 of this Act or the corresponding provision of prior law.
5. The board shall charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

6. Applicants for initial issuance or renewal of permits under this section shall in their applications list all states and jurisdictions in which they have applied for or hold permits to practice public accountancy or similar authorizations, and each holder of or applicant for a permit under this section shall notify the board in writing, within thirty days after its occurrence, of any change in the identities of partners, officers, or shareholders who work regularly within this state, any change in the number or location of offices within this state, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state or jurisdictions.
7. The board may require by rule, on either a uniform or a random basis, as a condition to renewal of permits under this section, that applicants undergo practice reviews conducted no more frequently than once every three years in such manner and producing such satisfactory result as the board specifies; provided that any such requirement must be adopted reasonably in advance of the time when it is first required to be met and must include reasonable provision for compliance by an applicant's showing that it has undergone a satisfactory review performed for other purposes which was substantially equivalent to practice reviews generally required under this subsection and completion of such review was within the three years immediately preceding the renewal period.

SECTION 8. Licensed public accountants and firms of public accountants.

Persons and firms who on the effective date of this Act hold registrations as licensed public accountants issued under prior law of this state are entitled to have permits to practice granted and renewed under sections 6 and 7 of this Act provided that they fulfill all requirements for renewal under those provisions. If such licensees hold valid permits to practice under sections 6 and 7 of this Act, they are entitled to engage in the practice of public accountancy to the same extent and with the same requirements as other holders of such permits and are entitled to use the designations "licensed public accountant" and "LPA", but no other designation, in connection with the practice of public accountancy. Licensed public accountant licenses and permits must be renewed annually, with renewal subject to payment of fees and any other requirements prescribed by the board.

SECTION 9. Appointment of secretary of state as agent. Application by a person or a firm not a resident of this state for a certificate under section 5 of this Act or a permit to practice under section 6 or 7 of this Act constitutes appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of public accountancy by the applicant within this state.

SECTION 10. Enforcement against holders of certificates and permits.

1. The board may revoke any certificate or permit issued under section 5, 6, or 7 of this Act or corresponding provisions of prior law; suspend any such certificate or permit or refuse to renew any such certificate or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding one thousand dollars; or place any licensee on probation,

all with or without terms, conditions, and limitations, for any one or more of the following reasons:

- a. Fraud or deceit in obtaining a certificate or permit;
 - b. Cancellation, revocation, suspension, or refusal to renew authority to engage in the practice of public accountancy in any other state for any cause;
 - c. Failure, on the part of a holder of a certificate or permit, to maintain compliance with the requirements for issuance or renewal of such certificate or permit or to report changes to the board under sections 5, 6, or 7 of this Act;
 - d. Revocation or suspension of the right to practice before any state or federal agency;
 - e. Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the filing or failure to file the certificate or permit holder's own income tax returns;
 - f. Violation of any provision of this chapter or rule adopted by the board under this chapter;
 - g. Violation of any rule of professional conduct adopted by the board under section 4 of this Act;
 - h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
 - i. Performance of any fraudulent act while holding a certificate or permit issued under this chapter or prior law; and
 - j. Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy.
2. In lieu of or in addition to any remedy specifically provided in subsection 1, the board may require of a licensee either or both of the following:
 - a. A practice review conducted as the board specifies.
 - b. Satisfactory completion of continuing professional education programs the board specifies.
 3. In any proceeding in which a remedy provided by subsection 1 or 2 is imposed, the board may require the respondent licensee to pay the costs of the proceeding.

SECTION 11. Enforcement procedures - Investigations. If this chapter authorizes the board to revoke, deny, or suspend the certificate, license, or permit of any licensee, the licensee has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32

relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. During the investigation of any complaint or other information suggesting violations of this chapter, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of the pending investigation must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

SECTION 12. Reinstatement.

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

SECTION 13. Unlawful acts.

1. A person or firm not holding a valid permit issued under section 6 or 7 of this Act may not issue a report on financial statements of any other person, firm, organization, or governmental unit. This prohibition does not apply to an officer, partner, or employee of any firm or organization affixing a signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".
2. The prohibition contained in subsection 1 is applicable to issuance, by a person or firm not holding a valid permit, of a report using any form of language conventionally used by licensees respecting a review of financial statements.

3. The prohibition contained in subsection 1 is applicable to issuance by a person or firm not holding a valid permit of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements.
4. A person not holding a valid certificate may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.
5. A firm may not assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants, unless the firm holds a valid permit issued under section 7 of this Act, and all partners, officers, and shareholders of the firm hold certificates.
6. A person may not assume or use the title or designation "licensed public accountant" or the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a licensed public accountant unless the person is registered as provided in section 8 of this Act.
7. A firm may not assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of licensed public accountants unless the firm holds a valid permit issued under section 7 of this Act and all partners, officers, and shareholders of the firm are licensed public accountant registrants.
8. A person or firm not holding a valid permit issued under section 6 or 7 of this Act may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "public accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "EA", "LA", "PA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA". A holder of a certificate who does not also hold a permit may use the titles pertaining to the certificate in any manner not prohibited by rules adopted by the board under section 4 of this Act.
9. A person or firm not holding a valid permit issued under section 6 or 7 of this Act may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a permit or has special competence as an accountant or auditor. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds and does

not prohibit any act of a public official or employee in the performance of duties.

10. A person holding a certificate may not engage in the practice of public accountancy unless the person also holds a valid permit issued under section 6 of this Act.
11. A person or firm holding a permit under this Act may not engage in the practice of public accountancy using a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter. Names of one or more former partners or shareholders may be included in the name of a firm or its successor.
12. This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country, whose activities in this state are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person or firm holds such entitlement. This subsection does not authorize issuing reports with respect to the financial statements of any other persons, firms, or governmental units in this state. A person or firm acting under the authority of this subsection may not use in this state any title or designation other than the one under which the person or firm practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

SECTION 14. Injunctions against unlawful acts. If as a result of an investigation, the board believes that any person or firm has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of this chapter, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person or firm has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other appropriate order must be granted by the court.

SECTION 15. Criminal penalties.

1. If by reason of an investigation, the board has reason to believe that any person or firm has knowingly engaged in acts or practices that constitute a violation of this Act, the board may bring its information to the attention of a state's attorney or the attorney general or other appropriate law enforcement officer who may cause appropriate criminal proceedings to be brought.
2. Any person or firm who knowingly violates any provision of section 13 of this Act is guilty of a class A misdemeanor.

SECTION 16. Single act evidence of practice. In any action brought under section 10, 11, 13, 14, or 15 of this Act, evidence of the commission of a single act prohibited by this Act is sufficient to justify a penalty which must include revocation, suspension, refusal to renew, reprimand, censure, fine, probation,

injunction, restraining order, or conviction or any combination of these penalties, without evidence of a general course of conduct.

SECTION 17. Confidential communications. Except by permission of the client engaging a licensee under this chapter, or the heirs, successors, or personal representatives of such client, a licensee or any partner, officer, shareholder, or employee of a licensee may not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee in the practice of public accountancy. Such information is deemed confidential but this section may not be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under section 10 or 11 of this Act, in ethical investigations conducted by private professional organizations, or in the course of practice reviews.

SECTION 18. Licensees' working papers - Clients' records.

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

SECTION 19. Uniform statute of limitations.

1. a. This section applies to all causes of action of the type specified in this section filed on or after the effective date of this Act.

- b. This section governs any action based on negligence or breach of contract brought against any accountant, any partnership of accountants, any accounting corporation, or any other legal entity of accountants registered, licensed, or practicing in this state by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited, or otherwise reported or opined on by the defendant accountant as a result of an engagement to provide public accounting services.
2. An action covered by this section may not be brought in any court in this state unless the suit is commenced on or before the earlier of:
 - a. Two years from the date the alleged act, omission, or neglect is discovered or should have been discovered by the exercise of reasonable diligence; or
 - b. Six years after the service for which the suit is brought has been performed or the date of the initial issuance of the accountant's report on the financial statements or other information, whichever comes first.

SECTION 20. REPEAL. Chapter 43-02.1 of the North Dakota Century Code is repealed.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 418

SENATE BILL NO. 2474
(Senators Graba, Nalewaja)
(Representatives A. Carlson, Mahoney, Tollefson)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-04 and 43-07-10 of the North Dakota Century Code, relating to contractor licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the names of three persons who are knowledgeable about the applicant's experience and qualifications. A bond, as ~~hereinafter~~ prescribed in section 43-07-11, and a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. Any person refused a license by the registrar may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state.

SECTION 2. AMENDMENT. Section 43-07-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **43-07-10. Renewal of license - Time requirements - Revocation of license for failure to renew.** Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, accompanied by two copies of a listing of each contract or subcontract obtained by the licensee during the preceding fiscal year in 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 the list to the state tax commissioner and shall

¹ NOTE: Section 43-07-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

also indicate whether the license of the applicant was renewed by the registrar. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal. The application for 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 renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued to the contractor, the new license may be issued only upon the showing, under the terms and conditions, and upon the payment of the fee required for the issuance of an original license of the class applied for. All certificates of renewal in which the applicant does not apply for a change in the class of license must be issued by the registrar to the applicant when the application is properly filed and the renewal fee is paid. If any contractor fails to file an application for a certificate of renewal when due, the registrar shall revoke the contractor's license. The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline. The contractor may then renew the license within ninety days after the filing deadline by paying a penalty fee of twenty-five percent of the license fee 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 25, 1993
Filed March 26, 1993

CHAPTER 419

HOUSE BILL NO. 1157
(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

CONTRACTOR LICENSING AND NAME CHANGE

AN ACT to create and enact a new section to chapter 43-07 of the North Dakota Century Code, relating to change of a contractor's name; and to amend and reenact sections 43-07-09, 43-07-14, 43-07-15, and 43-07-17 of the North Dakota Century Code, relating to contractor licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-07 of the North Dakota Century Code is created and enacted as follows:

Name changes. Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation registered with the secretary of state is not subject to this section.

SECTION 2. AMENDMENT. Section 43-07-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. The registrar shall investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of ten days ~~from and after the filing of the application~~ the date the registrar receives all documentation necessary to obtain a license. A copy of the required documentation sent by facsimile also commences the counting of the ten-day waiting period but a license may not be issued until original copies of all the documents and the appropriate fee is received by the registrar. The license issued on an original application shall entitle the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending February first.

SECTION 3. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license cancellation. Any person may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract,

and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.

3. The doing of any willful fraudulent act by the licensee as a contractor in consequence of which another is injured substantially.
4. The making of any false statement in any application for a license or renewal thereof.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 4. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. Cancellation of license - Appeal - Procedure. Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, meets the requirements of subsection 1 of section 28-32-05. If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, he shall cancel or suspend the contractor's license. A contractor aggrieved by a decision of the registrar in suspending or canceling his license may appeal such decision to the district court of his county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of cancellation or revocation. A "licensee" whose license is canceled or revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 shall govern such any appeal and proceedings ~~thereunder~~ hereunder.

SECTION 5. AMENDMENT. Section 43-07-17 of the North Dakota Century Code is amended and reenacted as follows:

43-07-17. Cancellation of license - Relicensing. A licensee whose license has been canceled ~~shall~~ may not be relicensed during the current calendar year in which ~~he has committed the offense for which such cancellation was ordered, unless the registrar has ordered suspension of the license for a specific period of time the decision to cancel the license was made.~~

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 420

SENATE BILL NO. 2074
(Industry, Business and Labor Committee)
(At the request of the State Board of Funeral Service)

FUNERAL SERVICE PRACTITIONERS LICENSING

AN ACT to create and enact a new section to chapter 43-10 of the North Dakota Century Code, relating to continuing education requirements for funeral service practitioners; and to amend and reenact sections 43-10-13, 43-10-15, 43-10-21, and 43-10-22 of the North Dakota Century Code, relating to licensure fees for funeral service practitioners and funeral establishments and the definition of funeral establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-10-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed. The board shall grant a license to practice funeral service or preparing dead human bodies for burial or shipment, if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than ~~seventy-five~~ one hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable and nontransferable and must be displayed by the licensee in a conspicuous place in the licensee's office or place of business.

SECTION 2. AMENDMENT. Section 43-10-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-15. License - Term - Renewal - Fee for renewal. A license to practice funeral service or preparing dead human bodies for burial is valid for one year and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed fifty one hundred dollars. The board may refuse to renew a license for cause.

SECTION 3. AMENDMENT. Section 43-10-21 of the North Dakota Century Code is amended and reenacted as follows:

43-10-21. Definition. As used in sections 43-10-21 through 43-10-24, the term "funeral establishment" shall mean a place of business situated at a specific street address or location, and used in the care and preparation for burial, transportation, or other disposition of dead human bodies, or used for the purpose

of conducting funeral services, ~~but shall not include a.~~ A branch establishment used only for layouts or funerals is a funeral establishment and must be independently licensed.

SECTION 4. AMENDMENT. Section 43-10-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-22. Licensure of funeral establishments. A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. A funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than ~~fifty~~ one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than ~~fifty~~ one hundred dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of a North Dakota licensed embalmer and funeral director. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

SECTION 5. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board may adopt rules establishing requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 421

SENATE BILL NO. 2113
(Industry, Business and Labor Committee)
(At the request of the State Board of Optometry)

OPTOMETRIST LICENSING

AN ACT to amend and reenact sections 43-13-16, 43-13-17, 43-13-18, 43-13-19, 43-13-20, and 43-13-22 of the North Dakota Century Code, relating to licensing of optometrists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-16. Examination required - When given. Before any person is granted a license to practice optometry in this state, the person must pass an examination given required by the board. The examination may be conducted by ~~four or more of the professional members of the board~~ at such times and places as are prescribed by it the board.

SECTION 2. AMENDMENT. Section 43-13-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-17. Application for examination - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for a license to practice optometry in this state shall file with the secretary of the board, at least five days before the date of the examination, a written application for examination. The application must be accompanied by the affidavits of two ~~freeholders~~ residents of this state to the effect that the applicant is of good moral character. The applicant also shall furnish satisfactory proof that the applicant:

1. Is at least eighteen years of age;
2. Has attended high school for four years or has the equivalent of such an education; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education of the American optometric association.

Before ~~beginning the examination receiving a license~~, the applicant shall pay to the secretary of the board ~~a sum fixed by the board, but not to exceed two hundred dollars~~ a registration fee of a reasonable sum fixed by the board.

SECTION 3. AMENDMENT. Section 43-13-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-18. When examination not required. An applicant may secure a license to practice optometry in this state without taking the required examination upon:

1. Presentation of a certified copy or an original certificate of registration or license issued to him by another state where the requirements for license are equivalent to those of this state and where like privileges are accorded to holders of licenses issued in this state; and
2. Payment of a ~~sum fixed by the board, but not to exceed two hundred dollars~~ reasonable sum fixed by the board.

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

SECTION 4. AMENDMENT. Section 43-13-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-19. License - When issued - Fee - Failure to pass examination - Reexamination. Every applicant for a license to practice optometry in this state who successfully passes the required examination given by the board shall receive a license and must be licensed upon payment to the secretary of the board ~~the sum of twenty-five dollars~~ a reasonable sum fixed by the board. If the applicant fails to pass the first examination, within fourteen months thereafter, the applicant may have another examination upon the payment of fifty percent of the current application fee. The examination must be given at such time and place as may be designated by the board.

SECTION 5. AMENDMENT. Section 43-13-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-20. Term of license - Renewal - Annual license fee - Continuing educational requirements. A license to practice optometry in the state may be issued for one year only, but may be renewed by paying to the secretary of the board, during the month of January of each year, the license fee for that year, and as of January 1, 1974, by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend such education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend such education programs during a year, which proof shall include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend such educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and ~~may not exceed two hundred dollars~~ be a reasonable sum fixed by the board. The board shall adopt reasonable rules which must state the type of optometric educational programs which are approved. The board shall also designate the number of classroom hours which must be attended, which ~~may not exceed sixty within~~ will be a reasonable amount for each three-year period. Any person who does not meet these requirements by February first of the year in which the license fee becomes due and payable is in default and may be reinstated by the board upon the payment of an additional sum ~~of twenty-five dollars~~ reasonably fixed by the board, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. Nothing contained herein requires an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

SECTION 6. AMENDMENT. Section 43-13-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-22. License - When revoked. The board may revoke or suspend any license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the holder of the license:

1. Has violated any provisions of this chapter, the rules and regulations of the board, or committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. ~~Is an habitual drunkard;~~
- 3- ~~Has prescribed, sold, administered, distributed, or given any drug legally classified as a controlled substance or as an addictive or dangerous drug;~~
- 4- 3. Has been addicted to the excessive use of intoxicating liquor or a controlled substance for at least six months immediately prior to the filing of the charges;
- 5- ~~4.~~ 4. Is permanently afflicted with any contagious or infectious disease;
- 6- 5. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;
- 7- 6. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
- 8- 7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than one who holds a valid unrevoked license as an optometrist in this state and who has an actual legal residence within this state.

Any person whose license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that the disability has been removed and upon such conditions as established by the board.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 422

SENATE BILL NO. 2213
(Industry, Business and Labor Committee)
(At the request of the Board of Pharmacy)

PHARMACIST PRACTICE

AN ACT to create and enact five new subsections to section 43-15-01, and a new subsection to section 43-15-10 of the North Dakota Century Code, relating to definitions, confidentiality, and a patient bill of rights under pharmacist laws; and to amend and reenact subsections 14 and 16 of section 43-15-01, sections 43-15-03, 43-15-06, 43-15-09, subsections 1, 2, and 3 of section 43-15-10, subsections 1 and 2 of section 43-15-13.2, sections 43-15-13.3, 43-15-13.4, subsection 1 of section 43-15-14, sections 43-15-15, 43-15-16, 43-15-18, 43-15-18.1, 43-15-19, 43-15-20, 43-15-21, 43-15-22, 43-15-25, subsections 1 and 2 of section 43-15-25.1, sections 43-15-26, 43-15-27, subsections 1 and 3 of section 43-15-28.1, sections 43-15-29, 43-15-30, 43-15-31, 43-15-31.2, 43-15-31.3, 43-15-33, subsections 4 and 5 of section 43-15-35, and subsections 1 and 2 of section 43-15-42.1 of the North Dakota Century Code, relating to the practice of pharmacy, the board of pharmacy, and licensing of pharmacists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsections 14 and 16 of section 43-15-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

14. "Pharmacist" means a person to whom the board has issued a ~~certificate of registration license~~ to practice the profession of pharmacy whose ~~certificate license~~ has not expired, or been suspended.
16. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary to provide pharmaceutical care, and drug utilization 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

¹ NOTE: Subsection 16 of section 43-15-01 was also amended by section 1 of Senate Bill No. 2444, chapter 423.

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.

SECTION 2. Five new subsections to section 43-15-01 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

"Administer" means the direct application of a drug to the body of a patient. The term includes the initial application of a drug for the purpose of teaching utilization of a drug and excludes the regular ongoing delivery to the patient in a health care setting and parenteral administration of a drug.

"Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

- a. As the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice; or
- b. For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

"Confidential information" means information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling, which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being, and to such other persons or governmental agencies authorized by law to receive such confidential information.

"Drug regimen review" includes the following activities:

- a. Evaluation of the prescription drug orders and patient records for:
 - (1) Known allergies;
 - (2) Rational therapy-contraindications;
 - (3) Reasonable dose and route of administration; and

- (4) Reasonable directions for use.
- b. Evaluation of the prescription drug orders and patient records for duplication of therapy.
- c. Evaluation of the prescription drug orders and patient records for interactions:
 - (1) Drug-drug;
 - (2) Drug-food;
 - (3) Drug-disease; and
 - (4) Adverse drug reactions.
- d. Evaluation of the prescription drug orders and patient records for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.

"Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

SECTION 3. AMENDMENT. Section 43-15-03 of the North Dakota Century Code is amended and reenacted as follows:

43-15-03. Board of pharmacy - Appointment - Qualifications. The state board of pharmacy shall consist of five members appointed by the governor upon the recommendation of the North Dakota pharmaceutical association. The persons appointed shall be ~~registered~~ licensed pharmacists and members of such association.

SECTION 4. AMENDMENT. Section 43-15-06 of the North Dakota Century Code is amended and reenacted as follows:

43-15-06. Organization of board ~~—Officers who act in place of those elected.~~

1. At the first regular meeting of the board after the appointment and qualification of a new member for a full term, the board shall elect a president, a secretary, and a treasurer. The president shall be chosen from the membership of the board, but any suitable person, whether a member of the board or not, may be chosen for the other offices. In case of the death, removal, resignation, absence, or refusal or inability to act of the president of the board, the senior member present shall act as president. In case of the death, removal, resignation, absence, or refusal or inability to act of the secretary or treasurer, the board may choose another person to act temporarily or for the remainder of the year. The president of the board of pharmacy shall preside at all meetings of the board and is responsible for the performance of all of the duties and functions of the board required or permitted by this chapter. Each additional officer elected by the board shall perform those duties

normally associated with the officer's position and such other duties assigned from time to time by the board.

2. The board shall employ a pharmacist to serve as a full-time employee of the board in the position of executive director. The executive director is responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The executive director may also serve as secretary and treasurer of the board.
3. The executive director is authorized to sign on behalf of the board notices, complaints, statement of charges, stipulations, settlement agreements, findings of fact, conclusions of law, orders and decisions of the board without additional signatures of the president of the board or board members.

SECTION 5. AMENDMENT. Section 43-15-09 of the North Dakota Century Code is amended and reenacted as follows:

43-15-09. Meetings - When held - Notice - Quorum. The board shall hold at least two and not more than four meetings in each calendar year for the examination of applicants for registration licensure. The board may hold such other meetings as may be necessary for the performance of its duties. A special meeting shall be held at such time and place as a majority of the members agree upon, or may be called by the secretary, at the request of the president or any two members, by giving such notice to the members as the board may prescribe by its rules and regulations. A majority of the board shall constitute a quorum for the transaction of business.

SECTION 6. AMENDMENT. Subsections 1, 2, and 3 of section 43-15-10 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. To place on probation, reprimand, or fine any pharmacy, pharmacist, or ~~registered~~ licensed pharmacist; or refuse to issue or renew, or suspend, revoke, restrict, or cancel, the ~~certificate of registration license~~, permit, or license of any pharmacy, pharmacist, or ~~registered~~ licensed pharmacist, if any of the following grounds apply and the pharmacy, pharmacist, or ~~registered~~ licensed pharmacist:
 - a. Is addicted to any alcohol or drug habit.
 - b. Uses any advertising statements of a character tending to deceive or mislead the public.
 - c. Is subject to drug or alcohol dependency or abuse.
 - d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.
 - e. Permits or engages an unauthorized person to practice pharmacy.
 - f. Is mentally or physically incompetent to handle his pharmaceutical duties.
 - g. Is guilty of fraud, deception, or misrepresentation in passing the pharmacist examination.

- h. Is found by the board in violation of any of the provisions of the laws regulating drugs, pharmacies, and pharmacists or the rules and regulations established by the board.
 - i. Is found to have engaged in unprofessional conduct as that term is defined by the rules of the board.
 - j. Is subject to incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.
 - k. Is found guilty by a court of competent jurisdiction of one or more of the following:
 - (1) A felony, as defined by the statutes of North Dakota.
 - (2) Any act involving moral turpitude or gross immorality.
 - (3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.
 - l. Commits fraud or intentional misrepresentation in securing the issuance or renewal of a ~~certificate of registration~~ license or pharmacy permit.
 - m. Sells, dispenses, or compounds any drug while on duty and while under the influence of alcohol or while under the influence of a controlled substance without a practitioner's prescription.
 - n. Divulges or reveals confidential information to an unauthorized person.
2. To prescribe rules and regulations not inconsistent with this chapter governing the cancellation or suspension of a ~~certificate of registration~~ license.
 3. To examine and ~~register~~ license as pharmacist any applicant found entitled to such ~~registration~~ license.

SECTION 7. A new subsection to section 43-15-10 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The board shall establish a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 43-15-13.2 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Who has secured a current annual ~~certificate of registration~~ license to practice pharmacy in this state in accordance with this chapter.
2. Who has paid an annual membership fee directly to the association as determined and permitted by the association and who does not hold a

current ~~certificate of registration~~ license to practice pharmacy in this state.

SECTION 9. AMENDMENT. Section 43-15-13.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-13.3. Rights of members of pharmaceutical association. The members of the association who have secured a current annual ~~certificate of registration~~ license to practice pharmacy in this state are entitled to all of the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all of the meetings of the association. The members of the association who have not secured a current annual ~~certificate of registration~~ license to practice pharmacy in this state are entitled to all of the rights and privileges of the association, except that they may not vote at the meetings or serve as an officer or director of the association.

SECTION 10. AMENDMENT. Section 43-15-13.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-13.4. Moneys payable from board of pharmacy to North Dakota pharmaceutical association. The association shall annually receive fifty percent of fees received by the board for renewal ~~certificates of registration licenses~~ as a pharmacist in this state. The association may use the funds for payment of expenses of the association including continuing pharmaceutical education, pharmacist discipline, the impaired pharmacist program, matters related to pharmacist registration standards, professional service standards, and general operating expenses. The amount provided in this section must be paid quarterly to the association by the board. The association may not receive from the board any portion of fees from out-of-state pharmacists who do not have a renewal ~~certificate of registration~~ license to practice pharmacy in this state and may not receive any portion of examination fees, permit fees, or other fees or funds not specified in this section.

SECTION 11. AMENDMENT. Subsection 1 of section 43-15-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Applicability. No person may engage in the practice of pharmacy unless ~~registered~~ licensed 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.

SECTION 12. AMENDMENT. Section 43-15-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-15. Qualifications of ~~registered~~ licensed pharmacist. Every applicant for ~~registration~~ license as a pharmacist in this state shall have the following qualifications:

1. Be at least eighteen years of age.
2. Be of good moral character.

3. Be a graduate of a school or college of pharmacy recognized by the board as an approved school.

Any applicant who is a graduate of a school or college of pharmacy located outside the United States, whose school or college of pharmacy has not been recognized by the board as an approved school but who is otherwise qualified to apply for ~~registration~~ licensure to practice pharmacy in this state, may be deemed to have satisfied the requirements of subsection 3 by verification to the board of applicant's academic record and applicant's graduation and by meeting such other requirements as the board may establish from time to time. The board may require such applicant to successfully pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education of such applicant with qualified graduates of a school or college recognized by the board as a prerequisite of taking the ~~registration~~ licensure examination provided for in section 43-15-19.

Before a ~~certificate~~ license will be granted by the North Dakota board of pharmacy, the applicant must have practical experience for a term to be determined by the board in accordance with the requirements of the national association of boards of pharmacy in a retail pharmacy under the supervision of a ~~registered~~ licensed pharmacist, which experience shall be predominantly work directly relating to selling drugs and poisons, compounding of pharmaceutical preparations and physicians' prescriptions, keeping records, and making reports required under the state and federal statutes. Any employment of the applicant prior to his completion of the first year of study in a college of pharmacy or its equivalent shall not be applied in computing the fulfillment of this requirement.

SECTION 13. AMENDMENT. Section 43-15-16 of the North Dakota Century Code is amended and reenacted as follows:

43-15-16. Exception to qualificational requirements. Any person qualified to take the examination for ~~registration~~ licensure as a pharmacist in this state under the law in effect prior to July 1, 1927, who failed to apply for the examination, upon due proof to the board that he was so qualified and that he is a bona fide resident of this state, may take the examination. Upon passing the examination in a manner satisfactory to the majority of the board, such person shall be given a ~~certificate~~ license as a ~~registered~~ licensed pharmacist.

SECTION 14. AMENDMENT. Section 43-15-18 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 15. AMENDMENT. Section 43-15-18.1 of the North Dakota Century Code is amended and reenacted as follows:

43-15-18.1. Conviction not bar to registration license - Exceptions. Conviction of an offense shall not disqualify a person from registration licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a pharmacist or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 16. AMENDMENT. Section 43-15-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-19. Examination for registration license. Except as otherwise provided in this chapter, every applicant for registration licensure as a pharmacist, before receiving a certificate license from the board, shall pass such an examination as to his education and professional qualifications as the board shall prescribe.

SECTION 17. AMENDMENT. Section 43-15-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-20. Fees for examination. Each applicant for registration licensure as a pharmacist in this state shall pay to the secretary of the board before examination a fee to be set by the board not to exceed three hundred dollars. If the applicant fails to pass a satisfactory examination, he may be reexamined at any regular meeting of the board, upon the payment of a further fee to be set by the board not to exceed three hundred dollars.

SECTION 18. AMENDMENT. Section 43-15-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-21. Certificate License - Issuance. The board shall cause to be issued to each pharmacist in this state whom it finds entitled thereto, a certificate license showing:

1. The date of issue.
2. The fact that the person to whom it was issued is a registered licensed pharmacist.
3. The residence of the person to whom the certificate license was issued.

The certificate license shall be signed by a majority of the members of the board.

SECTION 19. AMENDMENT. Section 43-15-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-22. Registration Licensing without examination. The board, without examination, may register and issue a certificate license as a pharmacist to any person of good moral character who presents to the board satisfactory evidence that before coming to this state he legally had been licensed as a pharmacist in another state or foreign country, in which the requirements for such license with respect to

qualifications are equivalent to the requirements of this state, but the board need not recognize or accept such license, certificate, or registration as evidence of the applicant's qualifications unless it is satisfied that the applicant is in fact qualified to be a pharmacist in this state. The board may deny recognition or acceptance of the license, certificate, or registration of any state or foreign country which does not accord similar recognition to licentiates of this state. A fee to be set by the board not to exceed three hundred dollars shall be paid prior to ~~registration~~ licensing without examination as provided for herein.

SECTION 20. AMENDMENT. Section 43-15-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-25. Term of certificate license - Renewal - Fee - Where displayed. The certificate license issued by the board to a pharmacist under the provisions of this chapter, and the registration thereof, shall entitle the holder to act in the capacity therein stated for one year unless duly canceled, suspended, or revoked. Every ~~registrant licensee~~ who desires to retain his ~~registration a license~~, on or before the first day of March in each year, shall pay to the secretary of the board a renewal fee in an amount to be fixed by the board not to exceed two hundred dollars. Upon payment of the fee, a renewal certificate license shall be issued. The certificate license and renewal shall be displayed in a conspicuous place in the pharmacy and drugstore where the holder is employed. After a ~~registrant licensee~~ has held ~~certificates licenses~~ duly issued over a period of fifty consecutive years, the secretary of the board may issue the ~~registrant licensee~~ a lifetime certificate license which will entitle the ~~registrant licensee~~ to act in the capacity of pharmacist thereafter without further payment unless such certificate license is canceled, revoked, or suspended.

SECTION 21. AMENDMENT. Subsections 1 and 2 of section 43-15-25.1 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The legislative assembly makes the following findings and declarations:
 - a. Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain professional competency and improve professional skills.
 - b. To assure the continued competency of the pharmacist and to maintain uniform qualifications for ~~registration~~ and licensure in the profession for the protection of the health and welfare of its citizens, the legislative assembly of North Dakota deems it in the public interest to adopt a continuous professional education program.
2. Commencing March 1, 1987, no annual renewal of a ~~certificate of registration license~~ may be issued to a pharmacist until such pharmacist has satisfactorily completed an accredited program of continuing professional education, all of which may be home self-study, during the previous two years to help assure the pharmacist's continued competence to engage in the practice of pharmacy. The board from time to time shall determine the amount of continuing education to be required, not to exceed thirty hours in each biennium period. Upon request of the board, proof of compliance shall be furnished to the board.

SECTION 22. AMENDMENT. Section 43-15-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-26. Failure to renew certificate license - Renewal fee - Cancellation of ~~registration and certificate license~~ - Reinstatement. If a ~~registered licensed~~ pharmacist in this state fails to pay the fee for a renewal of ~~his certificate a~~ license within the time required, the secretary of the board shall mail ~~him~~ the pharmacist a notice, addressed to ~~his~~ the pharmacist's last known place of residence, notifying ~~him~~ the pharmacist of ~~his~~ failure to obtain a renewal certificate license. The delinquent ~~certificate holder~~ licenseholder, within sixty days after the notice is mailed, may procure a renewal certificate license upon the payment of a renewal fee to be set by the board not to exceed two hundred dollars. If the ~~certificate holder~~ licenseholder fails to have ~~his certificate a~~ license renewed within sixty days after the notice is mailed, ~~his~~ the original or renewal certificate license, as the case may be, shall become void and the registry thereof shall be canceled. The board, on application of the delinquent ~~certificate holder~~ licenseholder and upon the payment of all unpaid fees, may authorize the issuance ~~to him~~ of a new certificate license without examination, if it is satisfied that the applicant is a proper person to receive the same.

SECTION 23. AMENDMENT. Section 43-15-27 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-27. Change place of business - Record - Fee. Every ~~registered~~ licensed pharmacist, within thirty days after changing ~~his~~ a place of business as designated on the books of the board, shall notify the secretary of the board of ~~his~~ the new place of business and shall accompany the notice with a fee to be set by the board not to exceed twenty-five dollars. Upon receipt of the fee and the notice of change of place of business, the secretary shall make the necessary change in the register and issue a receipt for the fee to the person sending it.

SECTION 24. AMENDMENT. Subsections 1 and 3 of section 43-15-28.1 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. If the board has verified evidence that probable cause or grounds for discipline requires the suspension of a pharmacy permit or ~~certificate of registration~~ license of a pharmacist and where harm to the public is so imminent and critical that substantial harm could or would likely result if the permit or ~~certificate~~ license is not suspended prior to a hearing, the board may order a temporary suspension ex parte.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the permit or ~~certificate of registration~~ license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the pharmacy or pharmacist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.

SECTION 25. AMENDMENT. Section 43-15-29 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-29. False registration - Penalty. Any person who shall procure or attempt to procure ~~registration~~ license as a pharmacist, for ~~himself~~ that person or any other person under this chapter, by making or causing to be made any false

representations, or who falsely or fraudulently ~~shall represent himself to be registered~~ represents that the person is licensed, shall be guilty of a class A misdemeanor, and in addition to the penalty imposed by the court, shall, if ~~he is a registered~~ licensed pharmacist, have ~~his registration~~ the license canceled by the board.

SECTION 26. AMENDMENT. Section 43-15-30 of the North Dakota Century Code is amended and reenacted as follows:

43-15-30. Registered Licensed pharmacist member of North Dakota pharmaceutical association. ~~Registration~~ Licensure as a pharmacist by the board entitles the person so ~~registered~~ licensed to a one-year membership in the North Dakota pharmaceutical association.

SECTION 27. AMENDMENT. Section 43-15-31 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-31. Physicians' ~~prescriptions~~ Prescriptions to be filed and preserved. Every ~~registered~~ licensed pharmacist in the state shall file, or cause to be filed, any ~~physician's~~ prescription, or a copy thereof, which has been compounded or dispensed in ~~his~~ the pharmacist's pharmacy or drugstore. The prescription or a copy of the prescription must be preserved for at least five years after it has been filled. The pharmacist may furnish a copy of any prescription to the party presenting it on the request of such party only.

SECTION 28. AMENDMENT. Section 43-15-31.2 of the North Dakota Century Code is amended and reenacted as follows:

43-15-31.2. Prescription drug information required. With each new prescription dispensed, the ~~registered~~ licensed pharmacist or the ~~registered~~ licensed intern pharmacist, in addition to labeling the prescription in accordance with law, must explain to the patient or the patient's agent the directions for use and a warning of the potential harmful effect of combining any form of alcoholic beverage with the medication and any additional information, in writing if necessary, to assure the proper utilization of the medication or device prescribed. For those prescriptions delivered outside the confines of the pharmacy, the explanation shall be by telephone or in writing, provided that this shall not apply to those prescriptions for patients in hospitals or institutions where the medication is to be administered by a nurse or other individual licensed to administer medications, or to those prescriptions for patients who are to be discharged from a hospital or institution.

SECTION 29. AMENDMENT. Section 43-15-31.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² **43-15-31.3. Oral transmission of refill prescriptions.** An oral reorder for a prescription drug may be accepted and dispensed by a pharmacist or ~~registered~~ licensed 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

² NOTE: Section 43-15-31.3 was also amended by section 1 of House Bill No. 1344, chapter 424.

prescription, the practitioner shall place a written copy of the prescription in the patient's records. Only a registered licensed pharmacist or a registered licensed 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.

SECTION 30. AMENDMENT. Section 43-15-33 of the North Dakota Century Code is amended and reenacted as follows:

43-15-33. License to sell emergency medicines. Any person of good moral character over eighteen years of age, who conducts a retail business at a place more than five miles [8.05 kilometers] from a drugstore employing a registered licensed pharmacist, may procure from the board, upon application and payment to said board of a fee of three dollars annually, a license which shall permit such retailer to keep for sale, and to sell in original packages, the simple household remedies and such other emergency medicines and poisons as from time to time may be approved for such sale by the board. Such license shall be for a period of one year commencing on July first and ending on June thirtieth following the date of the application. It shall apply to the location for which it is issued and shall be posted in a conspicuous place at such location. Upon satisfactory proof to the board of any violation of any law of the state by the licensee in or upon the premises licensed, the board shall revoke the license. The board, from time to time, may add to or eliminate from the approved list of simple household remedies, emergency medicines, and poisons salable under the license. Notice of the alterations shall be given by publication in such manner as the board deems proper.

³ **SECTION 31. AMENDMENT.** Subsections 4 and 5 of section 43-15-35 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The management of the pharmacy is under the personal charge of a pharmacist duly registered licensed under the laws of this state.
5. The applicant for such permit is qualified to conduct the pharmacy, and is a registered licensed pharmacist in good standing or is a partnership, each active member of which is a registered licensed pharmacist in good standing, or a corporation or association, the majority stock in which is owned by registered licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.

SECTION 32. AMENDMENT. Subsections 1 and 2 of section 43-15-42.1 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Upon the finding of the existence of grounds for discipline of any person holding, seeking, or renewing a ~~certificate of registration, permit, or license~~ under this chapter, the board may impose one or more of the following penalties:

³ NOTE: Section 43-15-35 was also amended by section 88 of Senate Bill No. 2223, chapter 54.

- a. Suspension of the offender's ~~certificate of registration~~, permit, or license for a term to be determined by the board.
 - b. Revocation of the offender's ~~certificate of registration~~, permit, or license.
 - c. Restriction of the offender's ~~certificate of registration~~, permit, or license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board.
 - d. Refusal to issue or renew offender's ~~certificate of registration~~, permit, or license.
 - e. Placement of the offender or the offender's ~~certificate of registration~~, permit, or license under suspension and supervision by the board for a period to be determined by the board.
 - f. Cancellation of the offender's ~~certificate of registration~~, permit, or license.
 - g. Reprimand.
 - h. Imposition of a fine not to exceed one thousand dollars for each offense involving diversion of controlled substances or a fine not to exceed five hundred dollars for any other offense, with the sanction that the ~~certificate of registration~~, permit, or license may be suspended until the fine is paid to the board.
2. Any person whose ~~certificate of registration~~, permit, or license to practice pharmacy in North Dakota has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such ~~certificate of registration~~, permit, or license. A petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

Approved March 24, 1993

Filed March 25, 1993

CHAPTER 423

SENATE BILL NO. 2444
(Senator Thane)

EMERGENCY PHARMACY PRACTICE

AN ACT to create and enact a new subsection to section 43-15-01 of the North Dakota Century Code, relating to definitions under the pharmacy laws; and to amend and reenact subsection 16 of section 43-15-01 of the North Dakota Century Code, relating to the practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 16 of section 43-15-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, and drug utilization 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; emergency pharmacy practice; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

SECTION 2. A new subsection to section 43-15-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"Emergency pharmacy practice" means in the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two hour supply of the prescribed medication, provided that:

¹ NOTE: Subsection 16 of section 43-15-01 was also amended by section 1 of Senate Bill No. 2213, chapter 422.

- a. The prescription is not for a controlled substance listed in Schedule II;
- b. The pharmaceutical is essential to the maintenance of life or to the continuation of therapy;
- c. In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;
- d. The pharmacist properly records the dispensing; and
- e. The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after the one-time emergency refill dispensing.

Approved March 24, 1993

Filed March 25, 1993

CHAPTER 424

HOUSE BILL NO. 1344
(Representatives Svedjan, C. Carlson, Grumbo, Huether,
D. Olsen, Stenehjem)

ORAL TRANSMISSION OF PRESCRIPTIONS

AN ACT to amend and reenact section 43-15-31.3 of the North Dakota Century Code, relating to the oral transmission of prescriptions to a pharmacist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-31.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **43-15-31.3. Oral transmission of ~~refill~~ prescriptions.** An oral ~~reorder for transmission of~~ 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 orally transmit the ~~oral refill~~ prescription. ~~Before authorizing the transmittal of the oral refill prescription, the~~ The practitioner shall place a written copy of document the ~~prescription order for oral transmission~~ in the patient's records. Only a registered pharmacist or a registered pharmacist intern may receive an ~~oral refill orally transmitted~~ 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 14, 1993
Filed April 15, 1993

¹ NOTE: Section 43-15-31.3 was also amended by section 29 of Senate Bill No. 2213, chapter 422.

CHAPTER 425

SENATE BILL NO. 2339
(Senators DeMers, Yockim)
(Representatives Bodine, Boucher, Cleary, A. Olson)

NURSE LOAN REPAYMENT PROGRAM

AN ACT to establish a state-community matching loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives; to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to practicing medicine without a license; and to provide an appropriation.

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:

Use of certain words or initials prohibited. The terms "physician assistant" and "certified physician assistant" and the initials "PA-C" may only be used to identify a person who has been issued a certificate of qualification by the board of medical examiners. A person who uses those terms or initials as identification without having received a certificate of qualification is engaging in the practice of medicine without a license.

SECTION 2. State-community matching loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives.

1. The North Dakota state-community matching loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives is established as provided by sections 2 through 10 of this Act.
2. The purpose of the program is to increase the number of nurse practitioners, physician assistants, and certified nurse midwives practicing in North Dakota communities with defined health professional need.
3. Under the program, loan repayments may be made to a recipient for educational expenses incurred while the recipient was attending an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives.
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 ten thousand dollar maximum loan repayment to be paid over two years.
6. The state health council shall select up to five recipients in five communities each year as participants in the program.

SECTION 3. Powers of state health council. The state health council may:

1. Determine eligibility and qualifications of an applicant to receive loan repayment according to section 4 of this Act.
2. Identify communities with health professional 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 sections 2 through 10 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 two-year nonrenewable loan repayment program contract with the applicant and the selected community to provide repayment of education loans in exchange for the nurse practitioner, physician assistant, or certified nurse midwife agreeing to practice 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 nurse practitioners, physician assistants, or certified nurse midwives 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 participants, 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 sections 2 through 10 of this Act.

SECTION 4. Nurse practitioner, physician assistant, and certified nurse midwife 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 needed in a selected community as determined by the state health council.
 - b. The applicant's commitment to serve in a community with defined health professional 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 willingness of the applicant's employing or supervising physician to accept medicare and medicaid assignment.
2. The state health council shall give priority for program participation to an applicant who:
 - a. Is enrolled in or has graduated from an accredited program located in this state; or
 - b. Is a North Dakota resident who is enrolled in or has graduated from an accredited program in another state or Canada.
 3. A nurse practitioner, physician assistant, or certified nurse midwife who receives loan repayment under sections 2 through 10 of this Act:
 - a. Must be a graduate of an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives;
 - b. Must be enrolled in or have graduated from an accredited training program for nurse practitioners, physician assistants, or certified nurse midwives prior to or within one year after submitting an application to participate in the loan repayment program and may not have practiced full time as a nurse practitioner, physician assistant, or certified nurse midwife in this state within three years before the date of the application;
 - c. Must be licensed or registered to practice as a nurse practitioner, physician assistant, or certified nurse midwife 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 services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

SECTION 5. Community selection criteria.

1. The state health council shall apply at least the following criteria for selecting a community with defined health professional need:
 - a. The ratio of physicians and mid-level health care practitioners to population in the community.
 - b. Access by the residents of the community to health care within the community and in the surrounding area.
 - c. Assessment of the expected number of clinic visits within the community per year.

- d. The mix of health care providers within the community.
 - e. Indications of community support for mid-level health care practitioner utilization within the community.
2. The state health council shall give priority for participation to a community that:
 - a. Demonstrates a need for primary health care; or
 - b. Has a population of not more than fifteen thousand persons.
 3. In selecting a community with health professional need, the state health council may consult public and private associations and organizations and make an onsite visit to a community for assessment.

SECTION 6. 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 7. Breach of loan repayment contract. A recipient of loan repayment under sections 2 through 10 of 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. The recipient who breached the loan repayment program contract shall pay the health council, within one year from the date of the breach of the loan repayment program contract, damages the state is entitled to recover. 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 8. 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 9. Term of obligated service. The length of the term of obligated service of a recipient of a loan repayment under sections 2 through 10 of this Act is two years.

SECTION 10. Payment. No payment may be made under sections 2 through 10 of this Act until the nurse practitioner, physician assistant, or certified nurse midwife has practiced at least three months on a full-time basis in a selected community with health professional need. Any arrangement made by the state health

council for loan repayment in accordance with sections 2 through 10 of 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 nurse practitioner, physician assistant, or certified nurse midwife completes the year of obligated service.

SECTION 11. APPROPRIATION. The funds provided in this section, or so much of those funds 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 loan repayment program for nurse practitioners, physician assistants, or certified nurse midwives for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Startup and administrative costs	\$ 5,000
Loan repayment funds	<u>37,500</u>
Total general fund appropriation	\$42,500

Approved April 12, 1993

Filed April 12, 1993

CHAPTER 426

HOUSE BILL NO. 1331
(Representatives Svedjan, Clayburgh, Grumbo, Huether, Monson,
Stenehjem)

PHYSICIAN DISCIPLINARY PROCEEDINGS

AN ACT to create and enact two new sections to chapter 43-17, two new subsections to section 43-17-30.1, seven new subsections to section 43-17-31, and a new section to chapter 43-17.1 of the North Dakota Century Code, relating to the board of medical examiners, state defense of board members, disciplinary action against physicians, and complaints to the commission on medical competency; and to amend and reenact sections 43-17-03, 43-17-32.1, and 43-17.1-06 of the North Dakota Century Code, relating to the board of medical examiners, the suspension of a physician's license, and the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The governor shall appoint a state board of medical examiners consisting of ten members, ~~nine~~ eight of whom shall be are M.D.'s and, one of whom shall be is a D.O., and one of whom is designated as a public member. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. each of whom shall have the following qualification Each physician member must:
 - 1- a. Be a practicing physician of integrity and ability.
 - 2- b. Be a resident of and duly licensed to practice medicine in this state.
 - 3- c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - 4- d. Have been engaged in the active practice of his the physician's profession within this state for a period of at least five years.
3. The public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.

4. A person appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 2. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Powers of the board of medical examiners. In addition to any other powers, the board may:

1. Employ or contract with one or more organizations or agencies known to provide acceptable examinations for the preparation and scoring of required examinations relating to physician licensure, and employ or contract with one or more organizations or agencies known to provide acceptable examination services for the administration of the required examination.
2. Prescribe the time, place, method, manner, scope, and subject of examination.
3. Impose sanctions, deny licensure, levy fines, or seek appropriate civil or criminal penalties against anyone who violates or attempts to violate examination security, anyone who obtains or attempts to obtain licensure by fraud or deception, and anyone who knowingly assists in that type of activity.
4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board or to the commission on medical competency.
5. Require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.
6. Establish a mechanism for dealing with a licensee who abuses or is dependent upon or addicted to alcohol or other addictive chemical substances, to enter an agreement, at its discretion, with a professional organization whose relevant procedures and techniques it has evaluated and approved for the organization's cooperation or participation.
7. Issue a cease and desist order, obtain a court order, or an injunction to halt unlicensed practice, a violation of this chapter, or a violation of the rules of the board.
8. Issue a conditional, restricted, or otherwise circumscribed license as it determines necessary.

SECTION 3. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Conflict of interest. A member of the board, acting in that capacity or as a member of any committee of the board, may not participate in the making of any

decision or the taking of any action affecting that member's personal, professional, or pecuniary interest, or that of a known relative or business or professional associate.

SECTION 4. Two new subsections to section 43-17-30.1 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

Require the licensee to provide free public or charitable service for a defined period.

Impose fines, not to exceed five thousand dollars for any single disciplinary action, in a case of failure to comply with statutory reporting requirements, or a violation of examination security.

SECTION 5. Seven new subsections to section 43-17-31 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

The violation of any state or federal statute or regulation relating to controlled substances.

The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.

The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

The failure to properly monitor a physician assistant or an emergency medical technician.

The failure to furnish the board or the commission on medical competency, their investigators, or representatives, information legally requested by the board or the commission.

SECTION 6. AMENDMENT. Section 43-17-32.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. ~~Where~~ When the board has verified evidence that probable cause requires the suspension of a physician's license ~~and where harm to the public is so imminent and critical that substantial harm would likely result if the physician's license is not suspended prior to a hearing to reasonably protect the public from imminent or critical harm,~~ the board may order a temporary suspension ex parte.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board ~~must~~ shall set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether ~~probable cause the board acted~~ reasonably ~~requires the temporary suspension to adequately protect the public interest or arbitrarily~~. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 7. A new section to chapter 43-17.1 of the North Dakota Century Code is created and enacted as follows:

Reports to commission on medical competency - When required. A physician, the state medical association and its components, a health care institution in the state, a state agency, a law enforcement agency in the state, or a court in the state having actual knowledge that a licensed physician may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine shall promptly report that information to the commission. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the commission if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee, or on its own motion, the commission may investigate any evidence that appears to show a licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically incapable of the proper practice of medicine. Any person required to report under this section who makes a report in good faith may not be subject to criminal prosecution or civil liability for making the report. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment.

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

43-17.1-06. Commission powers. The commission may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician under investigation. The confidentiality of the records by any other statute or law does not affect the validity of the commission's subpoena nor the admissibility of the records and board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under section 23-01-02.1 are not subject to this subsection.

2. Hold preliminary hearings.
3. Require any physician under investigation to submit to a physical ~~or~~, psychiatric, or competency examination, or chemical dependency evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators when necessary.
6. Hold confidential conferences with any complainant or any physician with respect to any complaint.
7. File a formal complaint against any licensed physician with the state board of medical examiners.

Approved March 19, 1993

Filed March 19, 1993

CHAPTER 427

SENATE BILL NO. 2445
(Senator Thane)

BOARD OF MEDICAL EXAMINERS TERMS

AN ACT to amend and reenact section 43-17-04 of the North Dakota Century Code, relating to the term of office of members of the board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17-04. Term of office. The term of office of each member of the board shall be ~~three~~ four years and until his successor is appointed and qualified. The terms shall be so arranged that no more than four terms shall expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment but in case of a vacancy before the expiration of a term, the appointment shall be for the residue of the term only. No member of the board shall serve thereon for more than two successive terms.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 428

SENATE BILL NO. 2477
(Senators Andrist, Jerome, O'Connell, Tallackson)
(Representative Skarphol)

MEDICAL LICENSE EDUCATION QUALIFICATIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-18. Qualifications of applicant for license. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

1. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;
2. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;
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 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. Three years of postgraduate training in the United Kingdom must be considered to be equivalent to one year of postgraduate training in the United States or Canada. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements;

4. Successful completion of a medical licensure examination satisfactory to the board;
5. Physical, mental, and professional capability for the practice of medicine in a manner acceptable by the board; and
6. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act which would constitute grounds for disciplinary action under this chapter; the board, in its discretion, may modify this restriction for cause.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 429

HOUSE BILL NO. 1068
(Representative R. Berg)

HOSPITAL EMPLOYMENT OF PHYSICIANS

AN ACT to amend and reenact section 43-17-42 of the North Dakota Century Code, relating to employment of physicians by hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-42 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-42. 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 licensed under chapter 23-16 may employ~~ 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 15, 1993
Filed March 16, 1993

CHAPTER 430

SENATE BILL NO. 2082
(Industry, Business and Labor Committee)
(At the request of the State Board of Plumbing)

PLUMBER LICENSING

AN ACT to create and enact two new sections to chapter 43-18 and a new subsection to section 43-18-18 of the North Dakota Century Code, relating to reporting and inspection of plumbing work and grounds for revocation of license; and to amend and reenact sections 43-18-08, 43-18-10, 43-18-11, and 43-18-21 of the North Dakota Century Code, relating to supervision and inspection of plumbing installations, locations where plumbing licenses are required, number of apprentices working under supervision of a plumber, and apprenticeship fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-18-08 of the North Dakota Century Code is amended and reenacted as follows:

43-18-08. Duties of board. The board shall:

1. ~~Supervise and inspect the plumbing, drainage, sewerage, and plumbing ventilation in all public buildings within this state.~~
2. Enforce the provisions of this chapter.
3. 2. Prescribe rules and regulations not inconsistent with the provisions of this chapter for the examination, regulation, and licensing of plumbers, either as master plumbers, journeyman plumbers, plumber's apprentices, or any of such classifications.

SECTION 2. AMENDMENT. Section 43-18-10 of the North Dakota Century Code is amended and reenacted as follows:

¹ **43-18-10. Firm engaged in installing plumbing to employ master plumber - Exceptions.** No person, firm, or corporation shall engage in the business of installing plumbing and shall not install plumbing in connection with the dealing in and selling of plumbing materials and supplies in any ~~incorporated city~~ location of this state having a public system of waterworks or sewerage, unless at all times a registered and licensed master plumber, who is responsible for the proper installation thereof, is in charge of such work. ~~There shall not be more than five plumber's apprentices under the immediate and personal supervision of either a master plumber or journeyman plumber employed on any installation, alteration, or repair project.~~ In cities of less than one thousand population and in all rural

¹ NOTE: Section 43-18-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

areas, a licensed journeyman plumber may engage in the business of installing plumbing.

SECTION 3. AMENDMENT. Section 43-18-11 of the North Dakota Century Code is amended and reenacted as follows:

² **43-18-11. License required - Exception for homeowner and full-time employee.** No person, firm, or corporation shall engage in the business of a master plumber, journeyman plumber, or plumber's apprentice in any ~~incorporated city~~ location of this state having a public system of waterworks or sewerage unless registered and licensed to do so by the board. Anyone not so licensed may do plumbing work which complies with the provisions of the minimum standards prescribed by the board on premises or that part of premises owned and actually occupied by ~~him~~ the person as ~~his~~ a residence, or may do plumbing repair on premises where he the person is employed in full-time maintenance work, unless otherwise forbidden to do so by a local ordinance. Public water system employees may install and maintain service lines and water meters on premises served by the water system.

SECTION 4. A new section to chapter 43-18 of the North Dakota Century Code is created and enacted as follows:

Report of work - Exception. A person shall report doing plumbing work subject to inspection under section 5 of this Act to the board upon forms furnished by the board. This section does not apply to plumbing installations in buildings that are not connected to a public system of waterworks or sewerage or in political subdivisions where inspection is required by local ordinance.

SECTION 5. A new section to chapter 43-18 of the North Dakota Century Code is created and enacted as follows:

Inspection of installation - Exception. The board has jurisdiction over and shall make provision for inspection of plumbing installations or alterations to public buildings and installations in newly constructed dwelling units, except as provided in this section. Political subdivisions may provide for inspection of plumbing work done within their jurisdictional limits. The board may charge the person responsible for the installation a reasonable fee not to exceed the cost of inspection. No inspection is required for any repair work or plumbing fixture replacement which requires only minor alteration, or to buildings that are not connected to a public system of waterworks or sewerage, and does not apply to maintenance work conducted by regularly employed maintenance personnel on the business premises of their employer.

SECTION 6. A new subsection to section 43-18-18 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Failure to report work as required under section 4 of this Act.

SECTION 7. AMENDMENT. Section 43-18-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² NOTE: Section 43-18-11 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

43-18-21. Apprenticeship.

- ~~1. Every apprentice plumber shall within thirty days after beginning his apprenticeship register with the state plumbing board on a registration application form which will be supplied by the board, showing date of beginning apprenticeship, age, schooling, previous experience, employer, and such other information as the board may require, except that a person who is working in a school-work program need not register.~~
- ~~2. Each applicant for registration as an apprentice must have reached the age of eighteen years. The board may accept registration of persons beginning a course in plumbing at an accredited school and from any persons who furnish satisfactory evidence to the board that they were actually employed as an apprentice plumber prior to July 1, 1975.~~
- ~~3. An apprentice shall serve a term of seven thousand six hundred hours. When the applicant furnishes proof of previous practical experience in the trade, or is a graduate of a course in plumbing in an accredited school, the board may grant him hourly credit toward his term of apprenticeship.~~
- ~~4. A master plumber employing a registered apprentice shall report to the board any changes made in relation to continued employment of such apprentice. It shall be the employer's duty and responsibility not to permit an apprentice to perform work unless he is under the direct supervision and in the immediate presence of either a master or journeyman plumber. Between five thousand seven hundred and seven thousand six hundred hours of apprenticeship training a registered apprentice, employed by a master plumber, may work by himself, or in cities of one thousand population or less and in all rural areas, such a registered apprentice may work in his own employ.~~

A registration certificate issued under the provisions of this section shall be valid for only one year and shall expire on the thirty-first day of December of the year in which it was issued. The certificate shall be renewed by the board upon application made within thirty days after the expiration thereof and on payment of the sum set by the board, but not to exceed twenty dollars for the first year, thirty dollars for the second year, forty dollars for the third year, and fifty dollars for the fourth year of apprenticeship. The fee after a four-year term of apprenticeship is the same as the fee for a journeyman plumber. This certificate of registration shall be the license required to be employed as a plumber's apprentice in this state.

Approved April 12, 1993

Filed April 12, 1993

CHAPTER 431

HOUSE BILL NO. 1218
(Representatives Keiser, Cleary)

DENTISTRY AND DENTAL HYGIENISTS

AN ACT to amend and reenact sections 43-20-02, 43-20-03, 43-20-05, 43-20-07, 43-20-12, 43-28-15, and 43-28-18 of the North Dakota Century Code, relating to the licensure of dental hygienists and to the practice of dentistry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the 1991 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 ~~who is~~ of good moral character, ~~who is~~ not already a licensed dental hygienist of this state, ~~being who is~~ a graduate of an accredited high school or its equivalent, ~~and~~ who is a graduate of a school of dental hygiene ~~which is~~ approved or provisionally approved by the commission on dental accreditation of the American dental association ~~and which provides a minimum of two academic years of dental hygiene curriculum~~, upon applying for a license and ~~upon the payment of paying~~ an amount determined by the ~~state~~ board of dental examiners, may be examined by the ~~North Dakota state board of dental examiners~~, on the subjects considered essential by it for a dental hygienist. The examinations 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 ~~must~~ may be registered and licensed as a dental hygienist. Applicants who fail to pass a satisfactory initial examination may be reexamined upon payment of the fee determined by the board for each subsequent examination. An applicant may not be allowed to take more than three examinations. Applicants for examination shall submit their credentials to the board at least thirty days before the examination date, ~~which~~. ~~The examination~~ date must correspond to the date of examination for applicants for a license to practice dentistry in this state.

The ~~North Dakota state~~ 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 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by. ~~The term dental hygiene and the practice thereof as~~ As used in this chapter shall mean, "dental hygiene" means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth; ~~provided, however, that~~ if such acts ~~must be~~ are performed under the

~~direction and control~~ direct or modified general supervision of a licensed dentist. ~~Persons practicing dental hygiene, other than dentists, shall~~ Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined from time to time by the board of dental examiners by appropriate rules and regulations.

SECTION 3. AMENDMENT. Section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

43-20-05. Licenses - Suspension, revocation, refusal to renew, and reinstatements. The board of dental examiners may suspend or revoke, with power to reinstate, or refuse to renew a dental hygienist's license, upon any one or more of the following grounds:

1. Gross immorality or unprofessional conduct, which includes knowingly failing to comply with commonly accepted national infection control guidelines and standards.
2. Failure, neglect, or refusal to renew a license annually.
3. Nonobservance or violation of ~~any provision of this chapter, or of any board rule or regulation made hereunder~~ adopted under this chapter.
4. ~~Gross inefficiency in the practice of dental hygiene; and said. The board shall also have the power to and may suspend or revoke, with power to reinstate, the license of any licensed dentist who shall permit~~ permits any dental hygienist, operating under his the dentist's supervision, to perform any operation other than that permitted under the provisions of this chapter, or who shall knowingly permit permits any person who is not a licensed dental hygienist to perform any operations or services as such under his that dentist's supervision.

The procedure to be followed in the case of ~~such a~~ reinstatement must suspension, revocation, or reinstatements shall reinstatement must be the same as that prescribed by law in the case of suspension, revocation, or reinstatement of a licensed dentist.

SECTION 4. AMENDMENT. Section 43-20-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-07. ~~Dental hygienists from other states~~ Licensure by credential review. Any dental hygienist ~~who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, who has been~~ duly licensed for at least three years to practice dental hygiene in another state, and who is of good moral character and desirous of removing to this state, and who 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 that state, certifying that the dental hygienist is of good moral character and professional attainments, may upon the payment of the fee determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the board deems necessary and proper, be granted a license to practice in this state. The board may, ~~however,~~

dispense with examining an applicant if the state in which the applicant was previously licensed has a reciprocal agreement with this state.

SECTION 5. AMENDMENT. Section 43-20-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-12. Dental hygienists—Auxiliary personnel—Distinction hygienist - Dental assistant - Scope of permitted practice.

1. A ~~legally~~ licensed and ~~registered~~ dentist may delegate to a competent dental ~~auxiliary personnel~~ hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures ~~which~~ that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance ~~which~~ that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards and for passive posttreatment orthodontic retainers that do not replace missing teeth.
2. Except as provided in this subsection, dental ~~auxiliary personnel~~ hygienists may perform delegated procedures only under direct or modified general supervision of a dentist licensed in this state. The board of dental examiners may, where the board finds it appropriate, authorize the performance of delegated procedures under indirect or general supervision in hospitals, long-term care facilities, and state institutions upon application by a dentist licensed in this state. Any authority granted under this subsection is valid for one year, and upon application by a licensed dentist for renewal of the authority, must be reviewed in full by the board prior to the granting of renewal of the authority.
3. A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners.

SECTION 6. AMENDMENT. Section 43-28-15 of the 1991 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 Licensure by credential review. The board may issue a license and certificate of registration to practice dentistry in this state to any person who wishes to practice dentistry in North Dakota upon a practical examination, if the person:

1. Has been licensed for at least five years 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 the fee determined by the board.

4. Delivers to the board a certificate from the examining or licensing board of every state in which the person is practicing or is licensed to practice, certifying that the person is a licensed and registered dentist in that state, and is of good moral character.

5. Demonstrates the person's ability to the satisfaction of the board.

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 7. AMENDMENT. Section 43-28-18 of the 1991 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, 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 the dentist's control.
6. Become grossly negligent in the practice of the profession.
7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
8. Willfully betrayed confidential relations.
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. However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of the association.
10. Shared any professional fee with anyone or paid anyone for sending or referring patients to 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.
11. Used any advertising of any character tending to mislead and deceive the public.
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.
17. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
18. Made any false representations that the person is the holder of a license or certificate of registration to practice dentistry.
19. Made any false claims that the person is a graduate of a dental college or the holder of any diploma or degree from a dental college.
20. Failed to comply with commonly accepted national infection control guidelines and standards.
21. ~~Violated any of the provisions of this chapter.~~

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 432

HOUSE BILL NO. 1489
(Representatives A. Carlson, Porter, Rennerfeldt)

REAL ESTATE BROKER EDUCATION

AN ACT to amend and reenact subsection 4 of section 43-23-08 of the North Dakota Century Code, relating to education standards for real estate brokers and salespersons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-23-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~Beginning July 1, 1992, each~~ Each applicant for a salesperson's license must have successfully completed at least thirty classroom hours in a course of study approved by the commission, and each applicant for a broker's license must have successfully completed an additional sixty classroom hours in a course of study approved by the commission. Applicants for a salesperson's license may take the licensing examination prior to the fulfillment of the educational requirement, however, no license can be issued to an applicant unless satisfactory evidence of completion of this requirement is furnished to the commission. Applicants for a broker's license must have satisfactorily fulfilled the educational requirement prior to taking the broker's licensing examination. As used throughout this section, the term "classroom hours" means the actual time during such course of study that the class is actually in session. The requirements of this subsection do not apply to license renewals under section 43-23-08.2.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 433

SENATE BILL NO. 2073
(Industry, Business and Labor Committee)
(At the request of the North Dakota Real Estate Commission)

REAL ESTATE LICENSE EXAMINATION FEES

AN ACT to amend and reenact subsection 8 of section 43-23-13 of the North Dakota Century Code, relating to examination fees for applicants for real estate licensure; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ SECTION 1. AMENDMENT. Subsection 8 of section 43-23-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. For each examination given to an applicant, before a license is issued, a fee of twenty dollars in an amount equal to the actual costs of the examination and its administration.

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

Approved March 18, 1993
Filed March 18, 1993

¹ NOTE: Section 43-23-13 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 434

HOUSE BILL NO. 1397
(Representatives Cleary, A. Carlson)
(Senators Nalewaja, Tallackson)

REAL ESTATE TRUST ACCOUNT

AN ACT to amend and reenact sections 43-23.4-02, 43-23.4-05, and subsection 3 of section 43-23.4-06 of the North Dakota Century Code, relating to interest-bearing real estate broker's trust accounts and an exemption for certain accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23.4-02. 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 July 1, 1991, the ~~association~~ committee 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 July 1, 1991, 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~~ 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.

8. The real estate trust account committee shall adopt rules establishing guidelines and procedures that provide for an exemption from interest-bearing trust accounts requirements in cases where the cost of maintaining an interest-bearing trust account exceeds any potential interest earnings.

SECTION 2. AMENDMENT. Section 43-23.4-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~43-23.4-05. 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 43-23.4-02 or, if there is no successor, to the general fund of the state real estate commission's research, recovery, and education fund. Upon dissolution of the organization, assets must be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or to such entities organized and operated exclusively for charitable, educational, religious, or scientific purposes under section 501(c)(3) of the Internal Revenue Code. Any assets not so disposed of must be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization is located exclusively for charitable, educational, religious, or scientific purposes.~~

SECTION 3. AMENDMENT. Subsection 3 of section 43-23.4-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 committee 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.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 435

HOUSE BILL NO. 1296
(Representatives Svedjan, Byerly)
(Senator Tallackson)

PHYSICAL THERAPIST REGULATION

AN ACT to amend and reenact sections 43-26-01, 43-26-06, 43-26-09, and 43-26-11 of the North Dakota Century Code, relating to definitions, fees, and continuing education for physical therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Physical therapy" means the art and science of a health speciality concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health speciality, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:
 - a. Performing and interpreting tests and measurements as an aid to physical therapy treatment.
 - b. Planning initial and subsequent treatment programs, on the basis of test findings.
 - c. Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability.
2. "Physical therapist" means a ~~person who applies physical therapy as defined in~~ physical therapist registered under this chapter.
3. "Physical therapist assistant" means a ~~person~~ physical therapist assistant registered under this chapter who assists, under the ~~onsite~~ direction of a registered physical therapist, in the practice of physical therapy and who performs such delegated procedures commensurate with the assistant's education and training. ~~No more than two physical therapist assistants may be supervised by one physical therapist.~~

4. "Supportive personnel" means persons other than registered physical therapists who function in a physical therapy setting and assist with physical therapy care.

SECTION 2. AMENDMENT. Section 43-26-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-06. Applicants - Qualifications - Examinations. It is the duty of the committee to pass upon the qualifications of all applicants for physical therapy and physical therapist assistant examination and registration, provide for and conduct all examinations, determine the applicants who successfully pass the examination, and duly register such persons. To be registered as a physical therapist or a physical therapist assistant, a person must:

1. Be at least eighteen years of age.
2. Be of good moral character.
3. Have been graduated by a school of physical therapy or a program of physical therapist assistant training approved by the committee.

Examinations must embrace subjects to test an applicant's knowledge of the basic and clinical sciences as they relate to physical therapy, and physical therapy theory and procedures, and such other subjects as the committee may determine to be necessary. When applying to take the registration examination, the applicant shall pay the committee a fee fixed by committee regulation and not exceeding two hundred dollars which may not be returned if the application is denied. The committee may determine the fee without complying with chapter 28-32.

SECTION 3. AMENDMENT. Section 43-26-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-09. Renewals - Continued currency - Fees. In January of each year every physical therapist or physical therapist assistant shall apply to the committee for an extension of his or her registration, and pay a fee determined by the committee regulation and which may not exceeding exceed one hundred dollars. The committee may determine the fee without complying with chapter 28-32. Registration that is not annually renewed on or before January thirty-first lapses on that date. The committee, in its discretion, may reinstate a lapsed registration upon payment of the full renewal fee as provided in this section and may, in its discretion, require a late renewal fee of fifty dollars.

The committee may ~~establish~~ adopt rules and ~~regulations~~ to require some evidence of continued currency for registration or reregistration as a physical therapist or a physical therapist assistant.

SECTION 4. AMENDMENT. Section 43-26-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-11. Refusal, suspension, or revocation of certificate. The committee may refuse to register any physical therapist or physical therapist assistant, or may suspend or revoke the registration of any physical therapist or physical therapist assistant, for any of the following grounds:

1. Use of controlled substances, drugs, or liquor to an extent that affects professional competency.

2. A determination by the committee that a conviction of the holder of an offense has a direct bearing on the holder's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Procuring, aiding, or abetting an illegal abortion.
4. Obtaining or attempting to obtain registration by fraud or deception.
5. A finding by a court of competent jurisdiction that the registrant is a mentally ill person and has not thereafter been restored to legal capacity.
6. Conduct unbecoming a person registered as a physical therapist or physical therapist assistant, or detrimental to the best interests of the public.
7. Treating or attempting to treat or diagnose ailments or other health conditions of human beings other than by physical therapy and as authorized by this chapter.
8. Failing to refer to a licensed health care professional any patient whose medical condition at the time of evaluation is determined by the physical therapist to be beyond the scope of practice of physical therapy as defined in section 43-26-01.
9. Failure of a ~~licensed~~ physical therapist to report to the committee any ~~licensed~~ physical therapist the holder knows to be in violation of this section.
10. In the case of a physical therapist assistant, practicing or offering to practice other than under ~~the on-site~~ direction of a ~~licensed~~ physical therapist.
11. Failure to comply with continuing education requirements adopted by the committee.
12. Failure to provide adequate supervision of supportive personnel as required by this chapter or by rule.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 436

SENATE BILL NO. 2062
(Senator W. Stenehjem)

PSYCHOLOGY PRACTICE

AN ACT to amend and reenact sections 43-32-01, 43-32-17, and 43-32-30 of the North Dakota Century Code, relating to the practice of psychology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

43-32-01. Definitions.

1. "Board" shall ~~mean~~ means the North Dakota state board of psychologist examiners.
2. "Practice of psychology" means the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes the rendering of psychological services to individuals, families, groups, and the public and is without regard to whether payment is received for services rendered.
3. "Psychologist" ~~shall mean a person~~ means an individual who holds himself out to the public by any title or description of services representing himself as a psychologist which incorporates the word "psychological", "psychologist", or "psychology", or a person who describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods, and procedures of the science and profession of psychology to persons for compensation or other personal gain is licensed under this chapter in the practice of psychology.
3. "Psychology" ~~shall mean the application of established principles of thinking, learning, motivation, perception and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment by persons trained in psychology. The application of said principles~~

~~includes, but is not restricted to, counseling, and behavior modification with persons or groups with adjustment problems in the areas of work, family, school, and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes, and skills; and doing research on problems relating to human behavior.~~

4. "School or college" means any university or other institution of higher learning that is accredited by a regional accrediting association, offering a full-time graduate course of study in psychology.

SECTION 2. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

43-32-17. License required for practice. ~~No person shall hold himself out as~~ Except as otherwise provided by this chapter, no individual may engage in the practice of psychology or represent that individual to be a psychologist in this state after July August 1, 1968 1993, unless he that individual has obtained from the board a license to do so under the provisions of this chapter.

SECTION 3. AMENDMENT. Section 43-32-30 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from the provisions of this chapter. The provisions of this chapter ~~shall~~ do not apply to the following:

1. Any person in the employ of any federal, state, county or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the activities and services of ~~such~~ the person are a part of the duties of ~~his~~ the person's office or position with such agency, nonprofit corporation or institution. This exemption ~~shall~~ is not be available or effective after July 1, 1970, ~~provided, however, that such.~~ However, the exemption period shall may be extended by the board in individual cases where hardship or other good cause is shown by the agency, nonprofit corporation or institution covered ~~hereby~~, or where the person affected ~~hereunder~~ has received from a school or college as defined herein, a master's degree in psychology and ~~his~~ the person's activities and services with such agency, nonprofit corporation or institution are performed under the supervision of a licensed psychologist.
2. A student, intern, or resident in psychology pursuing a course of study in psychology at a school or college ~~as defined in this chapter~~ if such activities and services constitute a part of ~~his~~ the person's supervised course of study if the person does not use the title "psychologist" and the student, intern, or resident status is clearly stated.
3. A nonresident, duly licensed or certified in the state of ~~his~~ the person's residence who does not practice psychology in this state for a period of more than thirty days in any calendar year.
4. ~~Lecturers~~ A lecturer from any school or college who ~~utilize their~~ uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of pschology unless the lecturer is licensed to practice psychology in this state.

5. Any person who is employed by a public school and whose activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption ~~shall apply~~ applies only when the person ~~to be exempted~~ has received a master's degree in school psychology from an accredited graduate training program. Standards ~~will~~ must be established by mutual consent of the board and the ~~department~~ superintendent of public instruction.
6. A person who is certified, licensed, or registered in this state in another health care profession, whose scope of practice is consistent with the accepted standards of that person's profession, and who does not represent to be rendering psychological services.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 437

HOUSE BILL NO. 1359
(Representatives Kroeber, Rydell, Hanson)
(Senators DeMers, Krauter)

ATHLETIC TRAINERS

AN ACT to amend and reenact sections 43-39-01, 43-39-04, 43-39-05, and subsection 1 of section 43-39-10 of the North Dakota Century Code, relating to regulation of athletic trainers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-39-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-39-01. Definitions.

1. "Athletic trainer" means a person with specific qualifications set forth in section 43-39-05, who is ~~furnishing an educational institution, organized amateur athletic association, or similar organization with providing~~ athletic training as defined in this chapter.
2. "Athletic training" means the practice of prevention, recognition, evaluation, management, treatment, and disposition, ~~and therapy service~~ of athletic injuries, ~~with the last being.~~ The term also means rehabilitation of athletic injuries, if under the written authorization order of a licensed physician. ~~Athletic training also~~ The term includes organization and administration of educational programs, athletic facilities, and the education and counseling of the public.
3. "Board" means the North Dakota board of athletic trainers established in section 43-39-02.
4. "Physician" means a doctor of medicine licensed to practice under chapter 43-17.

SECTION 2. AMENDMENT. Section 43-39-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-39-04. Unlawful practice.

1. No person ~~shall~~ may practice or hold ~~himself that person~~ out as being ~~able to practice an athletic training trainer~~ in this state unless ~~he that person~~ is licensed in accordance with this chapter.
2. No person ~~shall~~ may consult, teach, or supervise or hold ~~himself that person~~ out as being able to consult, teach, or supervise athletic training curricular courses in this state unless ~~he that person~~ is licensed in accordance with this chapter or chapter 43-17, or possesses a degree in a health-related field.

3. No person ~~shall~~ may represent ~~himself~~ that person as being a licensed athletic trainer or use in connection with ~~his~~ that person's name any letters, words, or insignia indicating or implying that ~~he~~ the person is a licensed athletic trainer unless ~~he~~ that person is licensed in accordance with this chapter.
4. ~~No person shall engage in the private practice of athletic training open to the public for a fee.~~

SECTION 3. AMENDMENT. Section 43-39-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-39-05. Qualifications. To be eligible for an athletic trainer license, an applicant must meet all the requirements of certification established by the national athletic trainers association board of certification, incorporated.

SECTION 4. AMENDMENT. Subsection 1 of section 43-39-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board may refuse to issue a license to an applicant or may suspend or revoke the license of a licensee if the applicant or licensee:
 - a. Has been convicted of a felony or misdemeanor involving moral turpitude, the record of a conviction being conclusive evidence of conviction.
 - b. Uses alcohol or narcotic drugs to the extent that the use affects ~~his~~ the person's professional competency.
 - c. Has obtained or attempted to obtain a license by fraud, deceit, or material misrepresentation.
 - d. Is guilty of treating or undertaking to treat ailments of human beings except as authorized pursuant to this chapter, or undertaking to practice independent of the ~~written authorization~~ order of a licensed physician, or is guilty of any act derogatory to the dignity and morals of the profession of athletic training.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 438

SENATE BILL NO. 2079

(Industry, Business and Labor Committee)

(At the request of the Board of Addiction Counseling Examiners)

ADDICTION COUNSELORS

AN ACT to create and enact six new sections to chapter 43-45 of the North Dakota Century Code, relating to licensure of addiction counselors; and to amend and reenact sections 43-45-01, 43-45-02, 43-45-03, 43-45-04, 43-45-06, and 43-45-07 of the North Dakota Century Code, relating to the powers and duties of the board of addiction counseling examiners and licensing of addiction counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-45-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Addiction counseling" means the provision of counseling or assessment of persons regarding their use or abuse of alcohol or a controlled substance.
2. "Board" means the board of addiction counseling examiners.
3. ~~"Internship" means a minimum of a twelve month, full time professional experience under the supervision of a clinical supervisor in a licensed addiction treatment facility.~~
- 4- "Practicum" means a minimum of nine months clinical training including inpatient ~~and~~ or outpatient treatment work.
4. "Work experience or internship" means a professional addiction treatment experience under the supervision of a clinical supervisor in a licensed addiction treatment facility or under the authority of a licensed addiction facility.
5. "Private practice of addiction counseling" means the independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling.

SECTION 2. AMENDMENT. Section 43-45-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-02. Board of addiction counseling examiners - Composition. The governor shall appoint a ~~seven member~~ nine member board of addiction counseling examiners. The members shall include:

1. ~~Four~~ Six members who are licensed addiction counselors actively engaged in the practice of addiction counseling.
2. Two members who are laypersons.
3. One member who is a ~~director or coordinator of an~~ licensed addiction counselor ~~training program in private practice.~~

SECTION 3. AMENDMENT. Section 43-45-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-03. Board member terms. The governor, prior to September 1, ~~1997~~ 1993, shall appoint ~~two one new~~ board members member for a term of one year, ~~two and one new~~ board members member for a term of two years, ~~and three board members for a term of three years.~~ Appointments made thereafter must be for three-year terms, but no person may be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the ~~first~~ newly appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.

SECTION 4. AMENDMENT. Section 43-45-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-04. Board power, duties, and authority. The board shall administer and enforce the provisions of this chapter, evaluate the qualifications of applicants, and issue licenses under this chapter. The board shall also approve addiction counselor training programs and internship sites. The board may:

1. Adopt rules under chapter 28-32, relating to licensure of addiction counselors, the establishment of ethical standards of practice for persons holding a license to practice addiction counseling in this state, the establishment of continuing education requirements, ~~and the requirements for approved addiction counselor training programs, internship sites, the requirements for clinical supervisors, the requirements for individuals in the private practice of addiction counseling, and requirements for trainee or internship approval.~~
2. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
3. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
4. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
5. Approve and administer examinations for licensing addiction counselors.
- 4- 6. Collect a fee set by the board on the filing of each application for a license to practice addiction counseling.
- 5- 7. Appoint or employ persons to assist the board in carrying out its duties under this chapter.

SECTION 5. AMENDMENT. Section 43-45-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-06. Licenses Addiction counseling practice - Exemptions.

1. ~~No person may represent to the public that the person is an addiction counselor or engage in the practice of addiction counseling in this state unless that person is a licensed addiction counselor. Nothing in this chapter may be construed to prevent any person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public, by title or by use of the initials L.A.C., that the person is engaging in addiction counseling. Trainees and interns in programs approved by the board to provide addiction counselor training may engage in activities required by the training program without obtaining a license to practice addiction counseling.~~
2. ~~The board shall issue an initial one-year license as an addiction counselor to an applicant who:~~
 - a. ~~Has successfully completed coursework, approved by the board, at an accredited college or university;~~
 - b. ~~Has successfully completed an examination approved by the board for this purpose; and~~
 - c. ~~Has successfully completed an addiction counselor training program, approved by the board, a practicum, and an internship.~~
3. ~~Upon application prior to January 1, 1988, the board shall issue an initial one-year license as an addiction counselor to any person holding a department of human services certification as an addiction counselor or a master addiction counselor.~~
4. ~~The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another state, territory of the United States, or province of Canada that imposes substantially the same requirements that are imposed under this chapter.~~
5. ~~An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.~~
2. Nothing in this chapter may be construed to prevent students who are enrolled in programs of study leading to addiction counseling degrees from training with a board-approved clinical supervisor.
3. Nothing in this chapter may be construed to prevent trainees or interns in programs approved by the board from engaging in activities required by the approved program without obtaining a license to practice addiction counseling.

SECTION 6. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Representation to the public.

1. A person may not represent to the public that the person is an addiction counselor or engage in the practice of addiction counseling in this state unless the person is a licensed addiction counselor.
2. The license issued by the board under the provisions of this chapter must be prominently displayed at the principal place of business where the addiction counselor practices.

SECTION 7. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Private practice of addiction counseling. A person may not engage in the private practice of addiction counseling unless that person:

1. Is licensed under this chapter as a licensed addiction counselor.
2. Is registered with the board as eligible for private practice under criteria established by board rule.
3. Has a board approved system established for peer review.
4. Upon application prior to January 1, 1994, the board shall register as eligible for private practice of addiction counseling any licensed addiction counselor who at that time is engaged in the private practice of addiction counseling.

SECTION 8. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Licenses.

1. The board shall issue an initial one-year license as an addiction counselor to an applicant who:
 - a. Has successfully completed coursework, approved by the board, at an accredited college or university;
 - b. Has successfully completed an examination approved by the board for this purpose;
 - c. Has successfully completed an addiction counselor training program approved by the board, a practicum, and a work experience or internship; and
 - d. Has satisfied the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.
2. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another state, territory of the United States, or province of Canada, or certifying body that imposes substantially the same requirements that are imposed under this chapter.

3. An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

SECTION 9. AMENDMENT. Section 43-45-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-07. Renewal of license ~~—Revocation of license.~~

1. The board shall annually renew the initial license of a person licensed under this chapter upon application and showing that:
 - a. The holder of the license is in compliance with the provisions of this chapter and the rules adopted under this chapter, ~~except that the requirements of subsection 2 of section 43-45-06 do not apply to those addiction counselors licensed pursuant to subsection 3 of section 43-45-06.~~
 - b. The holder of the license has successfully completed the continuing education requirements set by the board.
- ~~2. After notice to the licenseholder and, if demanded within thirty days, after a hearing before the board under chapter 28-32, the board may revoke the license of an addiction counselor upon a showing that the holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:

 - a. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.
 - b. Violating rules set by the board.
 - c. Violating a provision of this chapter.~~
- ~~3. One year from the date of the revocation, the licenseholder may make application for initial licensure.

 - c. The holder of a license has made payment of the renewal fees as set by the board.
 - d. The license is not currently revoked or suspended.~~
2. If the application for renewal does not meet the above conditions within six months of the expiration date of the license, the board may revoke the license.

SECTION 10. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Grounds for disciplinary proceedings. The board may deny an application, refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:

1. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.

2. Violating rules set by the board.
3. Violating a provision of this chapter.
4. Violating the professional code of conduct as adopted by the board.

One year from the date of the revocation, the licenseholder may make application for initial licensure.

SECTION 11. A new section to chapter 43-45 of the 1991 Supplement to 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. The hospital, clinic, or other health care institution, facility, or 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 an addiction counselor'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.

SECTION 12. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Complaints - Investigations.

1. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and request a written response from the counselor.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the complainant.
3. An addiction counselor who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation, and providing copies of patient records when reasonably requested by the board and accompanied by the appropriate release.
4. In order to pursue the investigation, the board has the power to subpoena and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed addiction counselor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interest of the public that this evaluation be secured. A written

request from the board constitutes authorization to release information. The patient records that are released to the board are not public records.

5. Unless there is a patient release on file allowing the release of information at the public hearing, all data and information, including patient records, acquired by the board in its investigation are confidential and closed to the public. All board meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

Approved April 7, 1993

Filed April 8, 1993

CHAPTER 439

SENATE BILL NO. 2359
(Senators Traynor, Krebsbach)
(Representatives Henegar, Kunkel)

REFLEXOLOGIST LICENSURE

AN ACT to establish a North Dakota board of reflexology and to provide for the licensure of reflexologists; add to create and enact a new subsection to section 43-25-04 of the North Dakota Century Code, relating to massage therapist licensure exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. "Board" means the North Dakota board of reflexology.
2. "Reflexologist" means a person who uses special pressure techniques on the reflexes in the human feet, hands, and ears and who has studied the principals of reflexology and anatomy and physiology generally included in a regular course of study.
3. "Reflexology" means the application of specific pressure by the use of the practitioner's hands, thumbs, and fingers to reflex points in the client's hands, feet, or ears using alternating pressure, and such techniques as thumb walking, finger walking, hook and back up, and rotation on a reflex.

SECTION 2. Board - Appointment - Terms. The board consists of three licensed reflexologists appointed by the governor except the first board need not consist of licensed members. A person must be a member of the North Dakota reflexology association in order to be eligible for appointment to, and continued membership on, the board. The members must be appointed for three years, staggered so that the term of one member expires as of July first of each year. Each member shall hold office until that member's successor is appointed and qualified. In July of each year the board shall meet at some convenient place within the state and shall elect one member as president, one member as vice president, and one member as secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties. The board may employ, and set the compensation of, employees to assist the secretary-treasurer in the performance of the secretary-treasurer's duties. The board shall hold meetings in the state as determined necessary by the board to discharge its duties. Board members are entitled to receive twenty-five dollars per day and travel expenses in an amount provided by law for state officials and employees when performing the official duties of the board. In addition, the secretary-treasurer is to be paid an extra nine dollars per meeting.

SECTION 3. Removal of members of the board. The governor may remove from office any member of the board for neglect of duties under this Act, malfeasance or incompetency in office, or unprofessional conduct. The governor may fill any

vacancy resulting from removal, resignation, or death of any member of the board. An appointee under this section must be a reflexologist licensed by the board.

SECTION 4. Duties of the secretary-treasurer - Compensation - Expenses of the board. The secretary-treasurer of the board shall:

1. Keep a record of:
 - a. The name and address of every person who is licensed to practice in the state;
 - b. The license number and date of issuance of the license for each licensed reflexologist;
 - c. The renewal date of each license; and
 - d. Other information as required by the board.
2. Furnish, upon demand, any person a certified copy of records upon payment of a ten dollar fee plus twenty-five cents for each page copied.
3. Prepare and submit to the governor and the North Dakota reflexology association a detailed annual report on the income and expenses of the board and a list of licensed reflexologists.

SECTION 5. Exemptions. This Act does not apply to the activities or services of physicians, chiropractors, physical therapists, cosmetologists, registered nurses, massage therapists, or members of other professions licensed, certified, or registered by the state who may on occasion apply pressure to the reflex points in the hands, feet, and ears in the course of their work. This Act does not apply to an individual who takes a self-help class and applies reflexology without pay on immediate family members or the individual's body.

SECTION 6. Requisites for licensure. Any person who is eighteen years of age or more and is either a bona fide resident of this state for at least one month immediately preceding the application or is a resident of another state who is practicing reflexology in this state shall submit an application for licensure to the secretary-treasurer of the board. An applicant is entitled to be issued a license as a reflexologist if the applicant:

1. Presents a diploma, certification, or completion credentials issued by a reputable school of reflexology which has submitted its curriculum to the board and has been approved by the board.
2. Presents three character references citing that the applicant is of good moral character.
3. Passes a reasonable demonstrative and written examination in reflexology. If there is an applicant for examination, the board shall conduct an examination at least once a year at a time and place designated by the board. Examinations must be held in the state. An applicant must receive a general average score on the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. The board shall notify the applicant of the applicant's score. An applicant who fails to pass any subject is entitled to a reexamination on that subject within six months upon payment of an additional fee of

fifty dollars or an amount established by the board. Two reexaminations exhaust the privilege under the original application.

4. Pays a licensing fee of seventy-five dollars or an amount set by the board.

SECTION 7. Reciprocity. Notwithstanding the requirements in section 6 for the issuance of a license, the board shall license an individual from another state who applies for licensure, pays the applicable fee, meets or exceeds the requirements set by the board, and who has no imposed or pending disciplinary actions.

SECTION 8. Restriction on use of title. A reflexologist licensed by the board may be held out as a "licensed reflexologist" and may use the abbreviation "L.R." as a part of or immediately following that person's name, in connection with the profession. No person may use the title "licensed reflexologist" unless licensed in accordance with this Act.

SECTION 9. License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice. A license must be recorded in the office of the clerk of the district court in any county where the reflexologist practices within thirty days after issuance.

A license must be renewed before June first of each year. The secretary-treasurer of the board shall mail notice of renewal to each licensed reflexologist's address as shown in the records of the board at least thirty days before the expiration of the license. The notice must include any requests for information necessary for renewal. The licensed reflexologist may renew a license by sending a renewal fee of twenty-five dollars, or an amount set by the board, to the secretary-treasurer of the board, and submitting proof that the reflexologist has attended a seminar on reflexology at least once during the preceding three years. A license that is not renewed by June thirtieth lapses.

SECTION 10. Deposit of fees. The secretary-treasurer shall deposit all fees collected under this Act in a separate account for the administration of this Act.

SECTION 11. Prohibited practices. A reflexologist may not use lotions, creams, or mechanical devices in the application of reflexology. A reflexologist may not diagnose or treat for specific diseases, practice spinal or other joint manipulations, prescribe or adjust medication, and prescribe or administer vitamins.

SECTION 12. Revocation of licensing. The license of a licensed reflexologist may be revoked, suspended, or annulled by the board upon any one or more of the following grounds:

1. That the person is guilty of gross malpractice or incompetence.
2. That the person's mental or physical health endangers public health or safety.
3. That the person fails to comply with rules of the board.
4. That the person is guilty of false or deceptive advertising.
5. That the person engages in unprofessional conduct.

SECTION 13. Administrative procedures. Any person may file a written complaint with the board seeking disciplinary action against a reflexologist for violations of this Act or rules adopted by the board. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, suspension, or nonrenewal or other disciplinary action of a licensed reflexologist, the board shall conduct a hearing. The board may dismiss a complaint that does not state facts that warrant action.

SECTION 14. A new subsection to section 43-25-04 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Reflexologists licensed under sections 1 through 13 of this Act.

Approved April 12, 1993
Filed April 12, 1993