

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2323
(Senators Oban, Davison, Meyer)
(Representatives P. Anderson, C. Johnson, Vetter)

AN ACT to amend and reenact sections 43-13-19, 43-13-20, 43-13-21.1, 43-13-22, and 43-13-26.1 of the North Dakota Century Code, relating to optometry licenses; and to repeal section 43-13-23, 43-13-24, 43-13-25, 43-13-26, and 43-13-32 of the North Dakota Century Code, relating to the state board of optometry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-19 of the North Dakota Century Code is amended and reenacted as follows:

43-13-19. License - When issued - Fee -~~Failure to pass examination - Re-examination.~~

Every applicant for a license to practice optometry in this state who meets the standards required for licensure, including successfully passes~~passing~~ the required examination shall ~~receive a license and~~ must be licensed upon payment to the secretary of the board of 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 2. AMENDMENT. Section 43-13-20 of 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.~~ A license may be renewed by paying~~submitting~~ to the secretary of the board, during the month of December of each year, the license fee for the following year, ~~by submitting and~~ satisfactory proof to the board that ~~within the preceding three-year period the applicant~~licensee has attended optometric educational programs ~~as required~~met all continuing education conditions set by the board. The board shall grant an applicant an additional year in which to attend the education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend the education programs during a year, which proof must 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 the educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and be a reasonable sum fixed by the board. The board shall adopt reasonable rules that must state the type of optometric educational programs which are approved. The board also shall designate the number of classroom hours which must be attended, which must be a reasonable amount for each three-year period. Any person who does not meet these requirements by January 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 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. This section does not require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

SECTION 3. AMENDMENT. Section 43-13-21.1 of the North Dakota Century Code is amended and reenacted as follows:

43-13-21.1. Disciplinary powers of the board.

1. The board may conduct investigations for the purpose of determining whether violations of this chapter or grounds for disciplining licensees exist. The board may establish an investigative panel to conduct an investigation under this section and may subpoena records.
2. A complaint, response, and any record received by the board during the course of the board's investigation into a complaint are exempt records, as defined in section 44-04-17.1, until the board concludes whether to pursue disciplinary action.
3. In addition to any other disciplinary actions available to the board, the board may take one or more of the following actions against an optometrist who violates the provisions of this chapter or the board's rules:
 - a. Letters of concern.
 - b. Letters of censure.
 - c. Reprimands.
 - d. Fines, including costs and attorney's fees.
 - e. Stipulations, limitations, and conditions relating to practice such as additional education and counseling.
 - f. Probation.
 - g. Suspension of the license.
 - h. Revocation of the license.
- 2-4. The board may require a licensee to be examined on optometric knowledge and skills, if the board has just cause to believe the licensee may be so deficient in knowledge and skills as to jeopardize the health, welfare, and safety of the citizens of this state.
- 3-5. The board may require a physical or mental evaluation as provided in section 43-13-26.1 if it has reason to believe the licensee's physical or mental condition may adversely affect the public welfare.
6. Disciplinary action must occur through an administrative hearing conducted in accordance with chapter 28-32.

SECTION 4. AMENDMENT. Section 43-13-22 of the North Dakota Century Code is amended and reenacted as follows:

43-13-22. License - When revoked.

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1. After an administrative hearing conducted in accordance with chapter 28-32, the board may restrict, 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 board determines the holder of the license:
 - a. 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. b. Has sold or distributed any drug legally classified as a controlled substance or as an addictive or dangerous drug;
 3. c. 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;
 4. d. Is afflicted with any contagious or infectious disease;
 5. e. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;
 6. f. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
 7. g. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than a licensed optometrist, a physician licensed under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.
2. 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.

SECTION 5. AMENDMENT. Section 43-13-26.1 of the North Dakota Century Code is amended and reenacted as follows:

43-13-26.1. Impaired optometrists.

~~The~~After a hearing conducted pursuant to chapter 28-32, the board may restrict, suspend, or revoke the license of any licensed optometrist whose mental or physical ability to practice optometry with reasonable skill and safety is impaired.

1. For the purpose of this section, "impairment" means the inability of a licensee to practice optometry with reasonable skill and safety by reason of:
 - a. Mental illness; or
 - b. Physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills.
2. The board may, upon probable cause, require a licensee or applicant to submit to a mental or physical examination by appropriate health care providers designated by the board. The results of the examination are admissible in any hearing ~~before the board~~, despite any claim of privilege under any contrary rule or statute. Every person who receives a license to practice optometry or who files an application for a license to practice optometry is deemed to have given consent to submit to the admissibility of the results in any hearing ~~before the board~~. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances deemed to be beyond the licensee's control, the board may enter a final disciplinary order upon proper notice, hearing, and proof of such refusal.
3. If the board finds, after examination and administrative hearing, that a licensee is impaired, it may take one or more of the following actions:
 - a. Direct the licensee to submit to care, counseling, or treatment acceptable to the board; and
 - b. Suspend, limit, or restrict the optometrist's license for the duration of the impairment.

4. Any licensee or applicant who is prohibited from practicing optometry under this section must be afforded an opportunity, at reasonable intervals, to demonstrate to the satisfaction of the board that the licensee or applicant can resume or begin the practice of optometry with reasonable skill and safety. Licensure ~~will~~may not be reinstated without the payment of ~~fifty percent~~ of the current license fee and may be subject to such reasonable restrictions as may be imposed by the board.

SECTION 6. REPEAL. Sections 43-13-23, 43-13-24, 43-13-25, 43-13-26, and 43-13-32 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2323.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 91 Nays 1 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State