Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2236
(Senator J. Lee)
(Representative Porter)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, a new subsection to section 43-17-02, and a new chapter to title 43 of the North Dakota Century Code, relating to the regulation and licensure of technical personnel who perform medical imaging procedures and radiation therapy treatments; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The North Dakota medical imaging and radiation therapy board of examiners for licensure and licensees under section 3 of this Act, except that criminal history record checks for licensees need not be made unless required by the board.

SECTION 2. A new subsection to section 43-17-02 of the North Dakota Century Code is created and enacted as follows:

An individual duly licensed to practice medical imaging or radiation therapy in this state under section 3 of this Act.

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

Definitions.

1. "Board" means the North Dakota medical imaging and radiation therapy board of examiners.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of certification of medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.

7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.

8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

License required.

After December 31, 2015, an individual may not perform or offer to perform medical imaging or radiation therapy procedures on humans for diagnostic or therapeutic purposes as defined in this chapter or otherwise indicate or imply that the individual is licensed to perform medical imaging or radiation therapy unless that individual is licensed under this chapter.

Exemptions.

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.

2. A dental assistant or dental hygienist licensed under chapter 43-20.

3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.

4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.

5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.

6. A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.

7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.

8. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

North Dakota medical imaging and radiation therapy board of examiners.

1. The governor shall appoint a state board of medical imaging and radiation therapy medical examiners consisting of nine members including:

   a. Five medical imaging or radiation therapy professionals, one each from the areas of radiography, radiation therapy, nuclear medicine technology, sonography, and medical imaging or radiation therapy education;

   b. One radiologist;

   c. One medical physicist;

   d. One physician from a rural area; and

e. One public member.

2. Each medical imaging or radiation therapy member of the board must:

a. Be a practicing medical imaging or radiation therapy licensee of integrity and ability.

b. Be a resident of and currently licensed in the member's medical imaging or radiation therapy modality in this state.

c. Be currently certified by a nationally recognized certification organization in the member's medical imaging or radiation therapy modality.

d. Have been engaged in the active practice of the medical imaging or radiation therapy profession within this state for a period of at least five years.

3. Each 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.

4. The radiologist, medical physicist, and physician members of the board must:

a. Be a practicing radiologist, medical physicist, or physician of integrity and ability.

b. Be a resident of and be licensed to practice as a physician or registered as a medical physicist in this state.

5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

Term of office.

The term of office of each member of the board is four years and until a successor is appointed and qualified. The terms must be so arranged that no more than four terms expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment. In case of a vacancy before the expiration of a term, the appointment must be for the residue of the term. A member of the board may not serve on the board for more than two successive four-year terms.

Removal of members of the board.

The governor for good cause shown and upon the recommendation of three-fourths of the members of the board may remove any member of the board for misconduct, incapacity, or neglect of duty.

Officers of the board.

The board shall elect a president and vice president from its members and a secretary-treasurer. The secretary-treasurer need not be a member of the board. The secretary-treasurer must be the general administrative and prosecuting officer of the board.

Meetings of the board.

The board shall hold at least two meetings each year to conduct business and to review the standards and rules for improving the administration of medical imaging or radiation therapy procedures. The board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of board members constitutes a quorum.

Powers of the board.

In addition to any other powers, the board may:

1. Administer this chapter.

2. Issue interpretations of this chapter.

3. Adopt rules as may be necessary to carry out this chapter.

4. Employ and fix the compensation of personnel the board determines necessary to carry into effect this chapter and incur other expenses necessary to effectuate this chapter.

5. Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this chapter.

6. Set fees for licensure, license renewal, and other services deemed necessary to carry out the purposes of this chapter.

7. Conduct investigations for the purpose of determining whether violations of this chapter or grounds for disciplining licensees exist.

8. Develop standards and adopt rules for the improvement of the administration of medical imaging or radiation therapy procedures in this state.

9. Employ or contract with one or more certification organizations known to provide acceptable examinations leading to certification of technical personnel performing medical imaging or radiation therapy procedures.

10. 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, or anyone who knowingly assists in that type of activity.

11. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, licensing and disciplinary authorities of other jurisdictions, certification organizations, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with the criminal history record check are the responsibility of the licensee or applicant.

12. 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.

13. Establish a mechanism for dealing with a licensee who abuses or is dependent upon or addicted to alcohol or other addictive chemical substances, and enter an agreement with a professional organization possessing relevant procedures and techniques the board has evaluated and approved for the organization's cooperation or participation.

14. 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.

15. Issue a conditional, restricted, or otherwise circumscribed license as the board determines necessary.

Conflict of interest.

A member of the board may not participate in the making of any decision or the taking of any action by the board or a board committee which affects the member's personal, professional, or pecuniary interest, or that of a known relative or business or professional associate.

Records of the board.

The board shall keep a record of its proceedings and applications for licensure. An application record must be preserved for at least six years beyond the disposition of the application or the last annual registration of the licensee, whichever is later.

Biennial report.

The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

Compensation - Expenses of board.

A member of the board is entitled to receive for each day during which the member actually is engaged in the performance of the duties of the member's office per diem as determined by the board and mileage as provided in section 54-06-09. The secretary of the board is entitled to receive salary or other compensation and allowance for clerical and other expenses of the board as the board determines.

License requirements.

1. The board may issue a license to any applicant who has submitted satisfactory evidence, verified by oath or affirmation, that the applicant:

   a. At the time of the application is at least eighteen years of age.

   b. Has successfully completed a four-year course of study in a secondary school approved by the state board of higher education or passed an approved equivalency test.

2. In addition to the requirements of subsection 1, an individual seeking to obtain a license for a specific modality of medical imaging or radiation therapy shall comply with the following requirements:

   a. Provide satisfactory completion of a course of study in radiography, radiation therapy, nuclear medicine technology, radiologist assistant, or sonography, or its equivalent to be determined by the board. The curriculum for each course of study may not be less stringent than the standards approved by the joint review committee on education in radiologic technology, joint review committee on nuclear medicine technology, commission on accreditation of allied health education programs, or any other appropriate accreditation agency approved by the board, provided the standards are not in conflict with board policy.

   b. Pass a certification examination established or approved by the board given by a certification organization recognized by the board.

   c. Show evidence of compliance with continuing education or recertification requirements required for registration of certification by a certification organization recognized by the board.

3. The board, upon application and payment of proper fees, may grant a license to an individual who has been licensed, certified, or registered to perform or administer medical imaging or radiation therapy procedures in another jurisdiction if that jurisdiction's standards of licensure

are substantially equivalent to those provided in this chapter in accordance with rules adopted by the board.

Scope of practice.

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:

   a. Nuclear medicine technologist.

   b. Radiation therapist.

   c. Radiographer.

   d. Radiologist assistant.

   e. Sonographer.

2. An individual holding a license under this chapter may perform medical imaging or radiation therapy procedures on humans for diagnostic or therapeutic purposes only by written, facsimile, electronic, or verbal prescription of an individual authorized by this state to prescribe medical imaging or radiation therapy procedures and under the supervision of a licensed practitioner.

3. An individual holding a license under this chapter may perform medical imaging and radiation therapy procedures on humans for diagnostic or therapeutic purposes only within the scope of that license as specified under the rules adopted by the board.

Fees.

1. The board shall set all fees by rules adopted under this chapter. All fees payable to the board must be deposited in the name of the board in financial institutions designated by the board as official depositories and must be used to pay all expenses incurred in carrying out the purposes of this chapter.

2. The board may issue a temporary license to an individual whose licensure or license renewal may be pending or if issuance is for the purpose of providing medical imaging or radiation therapy services to medically underserved areas as determined by the board. A temporary license may be issued only if the board finds it will not violate the purpose of this chapter or endanger the public health and safety. A temporary license expires when the determination is made either to issue or deny the applicant a regular license. A temporary license may not be issued for a period longer than one hundred eighty days.

Renewal.

1. A license issued under this chapter must be renewed before January second every two years. The license must be renewed upon the payment of a renewal fee if the licensee is not in violation of this chapter and has complied with any continuing education requirements adopted by rule of the board.

2. The board shall notify a licensee at least thirty days in advance of the expiration of the licensee's license. The licensee shall inform the board of any change of the licensee's address. Each licensee is responsible for renewing the licensee's license before the expiration date. A license that is not renewed automatically lapses.

3. The board may provide for the late renewal of an automatically lapsed license upon the payment of a reinstatement fee.

Disciplinary action.

The board may take disciplinary action against a licensee by any of the following means:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the performance of medical imaging or radiation therapy procedures.
5. Letter of censure.
6. Imposition of a penalty, not to exceed one thousand dollars for any single disciplinary action.

Any fines collected by the board must be deposited in the state general fund.

Grounds for disciplinary action.

Disciplinary action may be imposed against a licensee upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The conviction of any misdemeanor determined by the board to have a direct bearing upon an individual's ability to serve the public as a licensee or of any felony. A license may not be withheld contrary to chapter 12.1-33.
3. Habitual use of alcohol or drugs.
4. Physical or mental disability materially affecting the ability to perform the duties of a medical imaging or radiation therapy professional in a competent manner.
5. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
6. Aiding or abetting the performance of medical imaging or radiation therapy by an unlicensed, incompetent, or impaired individual.
7. The violation of any provision of this chapter or any rule of the board, or any action, stipulation, limitation, condition, or agreement imposed by the board or its investigative panels.
8. The performance of medical imaging or radiation therapy under a false or assumed name.
9. The willful or negligent violation of the confidentiality between medical imaging or radiation therapy professional and patient, except as required by law.
10. Gross negligence in the performance of medical imaging or radiation therapy.
11. Sexual abuse, misconduct, or exploitation related to the licensee's performance of medical imaging or radiation therapy.
12. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of medical imaging or radiation therapy.
13. The failure to maintain in good standing, including completion of continuing education or recertification requirements, a certification from a nationally-recognized certification

organization recognized by the board for the medical imaging or radiation therapy modality for which a license has been issued by the board.

14. The imposition by another state, jurisdiction, or certification organization recognized by the board of disciplinary action against a license, certification, or other authorization to perform medical imaging or radiation therapy based upon acts or conduct by the medical imaging or radiation therapy professional which would constitute grounds for disciplinary action under this section. A certified copy of the record of the action taken by the other state, jurisdiction, or certification organization is conclusive evidence of that action.

15. The failure to furnish the board or the investigative panel or investigators or representatives of the board or investigative panel information legally requested by the board or the investigative panel. The board shall keep a record of its proceedings in a disciplinary action or refusal to issue a license, together with the evidence offered.

Costs of prosecution - Disciplinary proceedings.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a medical imaging or radiation therapy professional, the board may direct any medical imaging or radiation therapy professional to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels in the investigation and prosecution of the case. When applicable, the medical imaging or radiation therapy professional's license may be suspended until the costs are paid to the board. A medical imaging or radiation therapy professional may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the medical imaging or radiation therapy professional's license may be suspended for nonpayment.

Practicing without a license - Violation of chapter - Penalty.

An individual who performs medical imaging or radiation therapy in this state without complying with this chapter, and any individual who violates any provision of this chapter for which another penalty is not specified is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provision of this chapter without proof of actual damages sustained by any person.

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-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2236.

Senate Vote:	Yeas 46	Nays 0	Absent 1
House Vote:	Yeas 67	Nays 23	Absent 4

Secretary of the Senate

Received by the Governor at 8:22 A.M. on March 18, 2015.

Approved at 1:41 P.M. on March 19, 2015.

Governor

Filed in this office this 19th day of March, 2015,

at 4:03 o'clock P. M.

Secretary of State