

## **CHAPTER 43-17 PHYSICIANS AND SURGEONS**

### **43-17-01. Definitions.**

1. "Board" means the state board of medical examiners.
2. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
3. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:
  - a. One who holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
  - b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
  - c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind.
  - d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings must be held to be engaged in the practice of medicine.

### **43-17-02. Persons exempt from the provisions of chapter.**

The provisions of this chapter do not apply to the following:

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the state board of medical examiners may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.
2. The domestic administration of family remedies.
3. Dentists practicing their profession when properly licensed.
4. Optometrists practicing their profession when properly licensed.
5. The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if the person does not hold out to be a physician or surgeon.
6. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
7. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
8. Podiatrists practicing their profession when properly licensed.
9. Any person rendering services as a physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician. However, sections 43-17-02.1 and 43-17-02.2 do apply to physician assistants. The state board of medical examiners shall prescribe rules governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of physician assistants. Physician assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors

need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
11. A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners prescribes rules governing the conduct, permits, fees, qualifications, activities, discipline, and supervision of radiologic technologists who provide those services.
12. A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.

#### **43-17-02.1. Physician assistant - Limitations on prescribing drugs.**

A physician assistant may prescribe medications as delegated to do so by a supervising physician. This may include schedule II through V controlled substances. A physician assistant who is a delegated prescriber of controlled substances must register with the federal drug enforcement administration.

#### **43-17-02.2. 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.

#### **43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted license.**

Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the state board of medical examiners under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation or teaching assistance for a period of not more than twenty-four hours; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations.

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

1. The governor shall appoint a state board of medical examiners consisting of thirteen members, nine of whom are doctors of medicine, one of whom is a doctor of osteopathy, one of whom is a physician assistant, and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
  - a. Be a practicing physician of integrity and ability.
  - b. Be a resident of and duly licensed to practice medicine in this state.
  - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
  - d. Have been engaged in the active practice of the physician's 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 in any form.
4. The physician assistant member of the board must:
  - a. Be a practicing physician assistant of integrity and ability.
  - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
  - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

**43-17-04. 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 but in case of a vacancy before the expiration of a term, the appointment must be for the residue of the term only. No member of the board may serve thereon for more than two successive terms.

**43-17-05. Removal of members of state board of medical examiners - Reelection.**

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

**43-17-06. Officers of the board.**

The board shall elect a president and vice president from its own number 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 such board.

**43-17-07. Meetings of the board.**

The board shall hold at least three meetings in each calendar year for the examination of applicants for licensure, and may call such special meetings as may be necessary. The meetings must be held at such places as the board may designate.

**43-17-07.1. 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. 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.

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.

**43-17-07.2. 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.

**43-17-08. Power of board to administer oaths - Summon witnesses - Take testimony.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-09. Subpoena - How to issue - Fees - Service.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-10. Failure to appear or testify - Penalty.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-11. Records of board - License applications - Preservation.**

The board shall keep a record of all of its proceedings and applications for license. Application records must be preserved for at least six years beyond the disposition thereof or the last annual registration of the licensee, whichever is longer.

**43-17-12. Biennial report.**

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

**43-17-13. Board to adopt rules and regulations.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-14. Compensation - Expenses of board and the members thereof.**

A member of the board shall receive for each day during which the member actually is engaged in the performance of the duties of the member's office such per diem as must be fixed by the board and such mileage as is provided in section 54-06-09. The secretary of the board shall receive such salary or other compensation, and such allowance for clerical and other expenses of the board as the board shall determine.

**43-17-15. Fees deposited with state treasurer - Separate fund - Vouchers.**

Repealed by S.L. 1971, ch. 510, § 15.

**43-17-16. License required.**

Repealed by S.L. 1987, ch. 525, § 13.

#### **43-17-17. Application for license.**

In order to obtain a license to practice medicine in this state, an application must be made to the board through the secretary-treasurer. The application must be upon the form adopted by the board and must be made in the manner prescribed by it.

#### **43-17-18. License requirements.**

1. General. Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant is of good moral character and satisfies all of the requirements of this chapter including:
  - a. Successful completion of a medical licensure examination satisfactory to the board;
  - b. Physical, mental, and professional capability for the practice of medicine in a manner acceptable to the board; and
  - c. 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 that would constitute grounds for disciplinary action under this chapter; the board may modify this restriction for cause.
2. Graduates of United States and Canadian schools.
  - a. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant has been awarded a degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions, territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred.
  - b. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board or by an accrediting body approved by the board.
3. Graduates of international schools.
  - a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.
  - b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed thirty months of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed thirty months 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 last eighteen months of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:

- (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
  - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.
- c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
  - d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.
4. Special license. The board may grant a temporary special license to an applicant who is a graduate of a medical school that is not located in the United States or Canada if that applicant has met all requirements for licensure except those pertaining to postgraduate training; has successfully completed two years of approved postgraduate training in the United States or Canada; and is enrolled in an approved postgraduate training program in this state. This special license is valid only while the licensee continues to be enrolled in an approved postgraduate training program in this state.

**43-17-19. License granted without examination upon qualification of applicant.**

Repealed by S.L. 1957, ch. 302, § 16.

**43-17-20. Examinations - How conducted - Subjects.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-21. License granted without examination to persons licensed in other states.**

The board may in its discretion license by endorsement an applicant who has complied with licensure requirements and who has passed an examination given by a recognized certifying agency approved by the licensing agency, provided such examination was, in the opinion of the board, equivalent in every respect to its examination. The board may also, in its discretion, enter into reciprocal agreements with the licensing agencies of other states or territories or the District of Columbia providing for a reciprocal waiver of further examination or any part thereof. In any case the applicant must appear before the board for such examination into the applicant's qualifications as may be required by the board. The board may by regulation make provision for temporary and special licenses to be in effect in the interval between board meetings.

**43-17-22. License - Fees.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-23. Licenses to be recorded.**

Repealed by S.L. 1983, ch. 479, § 3.

**43-17-24. Physicians register with the board.**

On or before the due date established by the board, every person legally licensed to practice medicine within this state shall file with the secretary-treasurer of the board a registration statement upon blanks prepared and provided by the board and shall pay to the secretary-treasurer the registration fee. No person may engage in the practice of medicine in this state without a current registration certificate issued by the board.

**43-17-25. Registration fee.**

The registration fee for any person licensed to practice medicine in the state must be fixed by regulation of the board. All fees must be paid to and held by the secretary-treasurer of the board and are subject to disbursement by the board in performing its duties.

**43-17-26. Annual license issued - License posted.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-26.1. License renewals - Late fees.**

A physician seeking to renew the annual registration who has failed to complete the annual registration process within the time specified by the state board of medical examiners must be assessed a fee equal to three times the normal annual registration fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

**43-17-27. Board to make rules and regulations as to registration statement - Keep record of persons paying fee.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-27.1. Continuing education requirements.**

1. The board shall promote a high degree of competence in the practice of medicine by establishing rules requiring every physician licensed in the state to fulfill continuing education requirements. Compliance with these rules must be documented at such times and in such manner as is required by the board.
2. Before a license may be renewed, the licensee shall submit evidence to the board establishing that all continuing education requirements prescribed by the rules adopted by the board have been met.
3. The board may exempt a physician from the requirements of this section in accordance with rules adopted by the board.

**43-17-28. When fee remitted to licensee.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-29. Practitioners not registered prohibited from practicing - Revocation of license.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-30. Payment of delinquent registration fee - Reinstatement.**

Any practitioner of medicine who has been licensed to practice in this state by the board, and who has been suspended from practice and whose license has been revoked because of failure to pay the registration fee, may, at the discretion of the board, be reinstated, and have the suspension revoked, and the license renewed by paying to the secretary-treasurer of the board the amount of the registration fee which is then in default.

**43-17-30.1. Disciplinary action.**

The board is authorized to take disciplinary action against a licensed physician by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the practice of medicine.
5. Letter of censure.
6. Require the licensee to provide free public or charitable service for a defined period.

7. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the state board of medical examiners must be deposited in the state general fund.

**43-17-31. Grounds for disciplinary action.**

Disciplinary action may be imposed against a physician 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 making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
4. Habitual use of alcohol or drugs.
5. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. Obtaining any fee by fraud, deceit, or misrepresentation.
8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
10. The practice of medicine under a false or assumed name.
11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
17. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
19. The failure to comply with the reporting requirements of section 43-17.1-05.1.
20. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
21. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
22. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.



23. 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.
24. The violation of any state or federal statute or regulation relating to controlled substances.
25. 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.
26. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
27. The failure to properly monitor a physician assistant, a fluoroscopy technologist, or an emergency medical technician.
28. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.

The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

#### **43-17-31.1. Costs of prosecution - Disciplinary proceedings.**

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician, the board may direct any physician to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels in the investigation and prosecution of the case. When applicable, the physician's license may be suspended until the costs are paid to the board. A physician 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 physician's license may be suspended for nonpayment.

#### **43-17-32. Appeal from decision of board refusing, suspending, or revoking a license.**

Repealed by S.L. 1987, ch. 525, § 13.

#### **43-17-32.1. Temporary suspension - Appeal.**

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physician would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physician, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physician.
2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, shall be taken against the physician who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The physician is entitled to a

continuance of the thirty-day period upon request for a period determined by the hearing officer.

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 the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record as defined in section 44-04-17.1.

**43-17-33. Use of fraudulent device in obtaining a license - Fraudulent impersonation of physician - Penalty.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-34. Practicing without a license - Violation of chapter - Penalty.**

Any person who practices medicine in this state without complying with the provisions of this chapter, and any person who violates any of the provisions 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 provisions of this chapter without proof of actual damages sustained by any person.

**43-17-35. Enforcement of chapter - Duty of secretary-treasurer.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-36. Physician practicing medicine while intoxicated.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-37. Emergency treatment by resident physician.**

Any physician or surgeon licensed under the provisions of this chapter who in good faith renders in this state emergency care at the scene of the emergency is expected to render only such emergency care as in the person's judgment is at the time indicated.

**43-17-38. Emergency treatment by nonresident physician.**

Any physician or surgeon duly licensed to practice as a physician or surgeon in another state of the United States who renders in this state emergency care at the scene of the emergency may only be held to the degree of care as specified in section 43-17-37, and may not be deemed to be practicing medicine within this state as contemplated by this chapter.

**43-17-39. Qualified doctors of osteopathy may be licensed.**

Repealed by S.L. 1987, ch. 525, § 13.

**43-17-40. Limitation of liability - Legislative intent.**

No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses, or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing, or transferring any tissue, organ, blood, or component thereof from one or more human beings, living or dead, to another human being, may be liable as the result of any such activity, save and except that each such person or entity remains liable for the person's or entity's own negligence or willful misconduct only.

The availability of scientific knowledge, skills, and materials for the transplantation, injection, transfusion, or transfer of human tissue, organs, blood, and components thereof is important to the health and welfare of the people of this state. The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of important scientific knowledge, skills, and materials. It is therefore the public policy of this state to promote the health and welfare of

the people by limiting the legal liability arising out of such scientific procedures to instances of negligence or willful misconduct.

**43-17-41. Duty of physicians and others to report injury - Penalty.**

1. Any physician, physician assistant, naturopath licensed under chapter 43-58, or any individual licensed under chapter 43-12.1 who performs any diagnosis or treatment for any individual suffering from any wound, injury, or other physical trauma:
  - a. Inflicted by the individual's own act or by the act of another by means of a knife, gun, or pistol shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or
  - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered.
2. The report under subsection 1 must state the name of the injured individual and the character and extent of the individual's injuries.
3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense, as defined in chapter 12.1-20, is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, naturopath, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.
4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.
5. Any individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
6. Any individual making or not making a report in good faith pursuant to this section is immune from liability for making or not making a report.

**43-17-42. Employment of physicians by hospitals.**

Notwithstanding any other provision of law, a hospital licensed under chapter 23-16 may employ directly or indirectly 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.

**43-17-43. Topical fluoride varnish.**

A licensed physician or physician assistant may apply topical fluoride varnish to an individual in accordance with rules adopted by the board.