

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1135

Introduced by

Political Subdivisions Committee

(At the request of the Board of Medical Examiners)

1 A BILL for an Act to amend and reenact sections 43-17-31, 43-17-32.1, subsection 1 of section
2 43-17.1-05, and section 43-17.1-05.1 of the North Dakota Century Code, relating to grounds for
3 disciplinary action, suspensions, complaints, and reports under the board of medical
4 examiners; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 43-17-31 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-17-31. Grounds for disciplinary action.** Disciplinary action may be imposed
9 against a physician upon any of the following grounds:

- 10 1. The use of any false, fraudulent, or forged statement or document, or the use of
11 any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of
12 the licensing requirements.
- 13 2. The making of false or misleading statements about the physician's skill or the
14 efficacy of any medicine, treatment, or remedy.
- 15 3. The conviction of any misdemeanor determined by the board to have a direct
16 bearing upon a person's ability to serve the public as a practitioner of medicine or
17 any felony. A license may not be withheld contrary to the provisions of chapter
18 12.1-33.
- 19 4. Habitual use of alcohol or drugs.
- 20 5. Physical or mental disability materially affecting the ability to perform the duties of
21 a physician in a competent manner.
- 22 6. The performance of any dishonorable, unethical, or unprofessional conduct likely
23 to deceive, defraud, or harm the public.
- 24 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 the commission on medical competency.
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 ~~his~~ that person's school of practice in the professional use of ~~his~~ 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 ~~furnish the board, its investigators or representatives, information legally requested by the board~~ comply with the reporting requirements of section 43-17.1-05.1.
- ~~20.~~ The failure to transfer medical records, except those relating to psychiatric treatment which ~~shall~~ must be governed by board rule, to another physician or to supply copies thereof to the patient or to ~~his or her~~ the patient's representative

- 1 when requested to do so by the patient or ~~his or her~~ the patient's designated
2 representative. A reasonable charge for record copies may be assessed.
- 3 ~~24.~~ 20. A continued pattern of inappropriate care as a physician, including unnecessary
4 surgery.
- 5 ~~22.~~ 21. The use of any false, fraudulent, or deceptive statement in any document
6 connected with the practice of medicine.
- 7 ~~23.~~ 22. The prescribing, selling, administering, distributing, or giving to oneself or to one's
8 spouse or child any drug legally classified as a controlled substance or recognized
9 as an addictive or dangerous drug.
- 10 ~~24.~~ 23. The violation of any state or federal statute or regulation relating to controlled
11 substances.
- 12 ~~25.~~ 24. The imposition by another state or jurisdiction of disciplinary action against a
13 license or other authorization to practice medicine based upon acts or conduct by
14 the physician that would constitute grounds for disciplinary action as set forth in
15 this section. A certified copy of the record of the action taken by the other state or
16 jurisdiction is conclusive evidence of that action.
- 17 ~~26.~~ 25. The lack of appropriate documentation in medical records for diagnosis, testing,
18 and treatment of patients.
- 19 ~~27.~~ 26. The failure to properly monitor a physician assistant or an emergency medical
20 technician.
- 21 ~~28.~~ 27. The failure to furnish the board or the commission on medical competency, their
22 investigators, or representatives, information legally requested by the board or the
23 commission.
- 24 The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or
25 refusing licenses together with the evidence offered.

26 **SECTION 2. AMENDMENT.** Section 43-17-32.1 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **43-17-32.1. Temporary suspension - Appeal.**

- 29 1. When, based on verified evidence, the board has ~~verified evidence that~~ probable
30 cause ~~requires to believe that~~ the suspension of a physician's license is required

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 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 the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 3. AMENDMENT. Subsection 1 of section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. All residents have the right to make or refer written complaints to the commission with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Any person who, in good faith, makes a report to the commission on medical competency under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the commission shall conduct ~~such~~ the investigation as it deems necessary to resolve the matter as it deems appropriate. The commission shall determine whether the physician has committed any of the grounds for disciplinary action provided for by section 43-17-31.

SECTION 4. AMENDMENT. Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to commission on medical competency - When required. A physician, a physician assistant, or a fluoroscopy technologist, the state medical association

1 and its components, a health care institution in the state, a state agency, or a law enforcement
2 agency in the state, ~~or a court in the state~~ having actual knowledge that a licensed physician, a
3 physician assistant, or a fluoroscopy technologist may ~~be medically incompetent, guilty of~~
4 ~~unprofessional conduct, or mentally or physically unable to safely engage in the practice of~~
5 ~~medicine~~ have committed any of the grounds for disciplinary action provided by law or by rules
6 adopted by the board shall promptly report that information in writing to the commission. A
7 medical licensee or any institution from which the medical licensee voluntarily resigns or
8 voluntarily limits the licensee's staff privileges shall report that licensee's action to the
9 commission if that action occurs while the licensee is under formal or informal investigation by
10 the institution or a committee of the institution for any reason related to possible medical
11 incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a
12 report concerning a licensee, or on its own motion, the commission may investigate any
13 evidence that appears to show a licensee is or may ~~be medically incompetent, guilty of~~
14 ~~unprofessional conduct, or mentally or physically incapable of the proper practice of medicine~~
15 have committed any of the grounds for disciplinary action provided by law or by rules adopted
16 by the board. Any person required to report under this section who makes a report in good
17 faith may not be subject to criminal prosecution or civil liability for making the report. For
18 purposes of any civil proceeding, the good faith of any person who makes a report pursuant to
19 this section is presumed. A physician who obtains information in the course of a
20 physician-patient relationship in which the patient is another physician is not required to report if
21 the treating physician successfully counsels the other physician to limit or withdraw from
22 practice to the extent required by the impairment. For purposes of this section, a person has
23 actual knowledge if that person acquired the information by personal observation or under
24 circumstances that cause that person to believe there exists a substantial likelihood that the
25 information is correct.