

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1351

Introduced by

Representative Svedjan

Senator Traynor

1 A BILL for an Act to provide for a waiver of privilege for health care providers.

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

3 **SECTION 1. Waiver of privilege for health care providers.** A party who commences
4 an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort,
5 against a health care provider, as defined in section 32-42-01, or a health care facility, on the
6 person's own behalf or in a representative capacity, waives in that action any privilege existing
7 under rule 503 of the North Dakota Rules of Evidence, as to any information or opinion in the
8 possession of any other health care provider who has examined or cared for the party or other
9 person whose health or medical condition has been placed in controversy in the action. The
10 waiver must permit all defendants to the action, and their attorneys or authorized
11 representatives, to informally discuss the information or opinion with the health care provider if
12 the provider consents. Any information or opinions obtained from a physician during an
13 informal discussion are inadmissible in any legal proceeding.

14 The plaintiff's attorney or authorized representative must have the opportunity to be
15 present at any informal discussion. This requirement is satisfied if the defendant's attorney
16 serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal
17 discussion stating the time, date, and location of the informal discussion. Appropriate medical
18 authorizations permitting access to the written medical record, informal discussion, and
19 testimony at a deposition or trial, must be provided by the party commencing the action upon
20 request from any other party.