

Introduced by

Representative Svedjan

Senator Traynor

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

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

4 **SECTION 1. Waiver of privilege for health care providers and informal**  
5 **discussion.** A party who commences an action for malpractice, error, mistake, or failure to  
6 cure, whether based on contract or tort, against a health care provider, as defined in section  
7 32-42-01, or a health care facility, on the person's own behalf or in a representative capacity,  
8 waives in that action any privilege existing under rule 503 of the North Dakota Rules of  
9 Evidence, as to any medical records, opinions, or other information in the possession of any  
10 other health care provider who has examined or cared for the party or other person whose  
11 health or medical condition has been placed in controversy in the action. The waiver must  
12 permit all defendants to the action, and their attorneys or authorized representatives, to  
13 examine the medical records, opinions, or other information and informally participate in a  
14 discussion with the health care provider, if the provider consents, regarding the medical  
15 records, opinions, or other information that appear reasonably calculated to lead to the  
16 discovery of admissible evidence as to any element of the action or the defense of the action.  
17 Any statements made by a health care provider during an informal discussion are not  
18 admissible, directly or by reference in direct or cross-examination of any witness, in any  
19 administrative, civil, or criminal proceeding. However, this section does not render inadmissible  
20 any statements obtained from the health care provider in discovery or any legal proceedings  
21 independent of the informal discussion which are otherwise admissible in the administrative,  
22 civil, or criminal proceeding.

23 The plaintiff's attorney or authorized representative must have the opportunity to be  
24 present at any informal discussion. This requirement is satisfied if the defendant's attorney

1 serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal  
2 discussion stating the time, date, and location of the informal discussion. If the plaintiff's  
3 attorney, after consultation with the defendant's attorney, is unable to attend the discussion at  
4 the time or on the date specified in the notice or at some other agreed upon date and time, the  
5 court in which the action is pending shall, upon motion of any party before the date specified in  
6 the notice, hold a scheduling conference to set a date and time for the informal discussion that  
7 will best serve the convenience of the parties and the health care provider and the interests of  
8 justice. Appropriate medical authorizations permitting access to the written medical record,  
9 informal discussion, and testimony at a deposition or trial, must be provided by the party  
10 commencing the action upon request from any other party to the action.