

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, on the person's own behalf or in  
6 a representative capacity, waives in that action any privilege as to any information or opinion in  
7 the possession of a health care provider who has examined or cared for the party or other  
8 person whose health or medical condition has been placed in controversy in the action. The  
9 waiver permits all parties to the action, and their attorneys or authorized representatives, to  
10 informally discuss the information or opinion with the health care provider if the provider  
11 consents.

12 The plaintiff's attorney or authorized representative must have the opportunity to be  
13 present at any informal discussion. This requirement is satisfied if the defendant's attorney  
14 mails a written notice to the plaintiff's attorney at least fifteen days prior to the informal  
15 discussion stating the time, date, and location of the informal discussion. Appropriate medical  
16 authorizations permitting informal discussion must be provided by the party commencing the  
17 action upon request from any other party. A health care provider may refuse to consent to the  
18 discussion but, in that event, the party seeking the information or opinion may take the  
19 deposition of the health care provider with respect to that information and opinion without  
20 obtaining a prior court order.