

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1158

Introduced by

Human Services Committee

(At the request of the State Board of Medical Examiners)

1 A BILL for an Act to create and enact a new section to chapter 43-17 of the North Dakota
2 Century Code, relating to exceptions to the licensure requirements to practice medicine; and to
3 amend and reenact sections 43-17-01, 43-17-02, 43-17-06, 43-17-30.1, and 43-17-31 of the
4 North Dakota Century Code, relating to the definitions of practice of medicine and telemedicine,
5 persons exempt from medical practice licensure requirements, officers of the board of medical
6 examiners, and disciplinary action of the board.

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

8 **SECTION 1. AMENDMENT.** Section 43-17-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-17-01. Definitions.**

- 11 1. "Board" means the state board of medical examiners.
- 12 2. "Interactive telecommunications" means any audio, video, or data communication
13 involving a real-time or store and forward two-way transfer of data or information.
- 14 3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and
15 surgeon (D.O.).
- 16 ~~2.~~ 4. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics.
17 The following persons must be regarded as practicing medicine:
- 18 a. One who holds ~~himself~~ out to the public as being engaged within this state in
19 the diagnosis or treatment of diseases or injuries of human beings.
- 20 b. One who suggests, recommends, or prescribes any form of treatment for the
21 intended relief or cure of any physical or mental ailment of any person, with
22 the intention of receiving, directly or indirectly, any fee, gift, or compensation.
- 23 c. One who maintains an office for the examination or treatment of persons
24 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 ~~his~~ the person's name, indicating that ~~he~~ 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.

e. One who practices telemedicine.

~~3. "Board" means the state board of medical examiners.~~

5. "Telemedicine" means the practice of medicine by means of interactive telecommunications, with the intention of receiving, directly or indirectly, any compensation, but does not include a consultation consisting of only an oral conversation by telephone or a textual message by electronic mail or facsimile.

SECTION 2. AMENDMENT. Section 43-17-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state.~~

~~3.~~ The domestic administration of family remedies.

~~4.~~ 3. Dentists practicing their profession when properly licensed.

~~5.~~ 4. Optometrists practicing their profession when properly licensed.

~~6.~~ 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 ~~he~~ the person does not hold ~~himself~~ out to be a physician or surgeon.

~~7.~~ 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.

~~8.~~ 7. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.

~~9.~~ 8. Podiatrists practicing their profession when properly licensed.

~~10.~~ 9. Any person rendering services as a ~~physician's-trained~~ physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners shall prescribe rules and regulations governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of ~~physicians'-trained~~ physician assistants. ~~Physicians'-trained~~ 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.

~~11.~~ 10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.

~~12.~~ 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.

SECTION 3. AMENDMENT. Section 43-17-06 of the North Dakota Century Code is amended and reenacted as follows:

1 **43-17-06. Officers of the board.** The board shall elect a president and vice president
2 from its own number and a secretary-treasurer. The secretary-treasurer need not be a member
3 of the board. ~~He~~ The secretary-treasurer must be the general administrative and prosecuting
4 officer of such board.

5 **SECTION 4. AMENDMENT.** Section 43-17-30.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-17-30.1. Disciplinary action.** The board is authorized to take disciplinary action
8 against a licensed physician by any one or more of the following means, as it may find
9 appropriate:

- 10 1. Revocation of license.
- 11 2. Suspension of license.
- 12 3. Probation.
- 13 4. Imposition of stipulations, limitations, or conditions relating to the practice of
14 medicine.
- 15 5. ~~Reprimand.~~
- 16 6- Letter of censure.
- 17 7- ~~Letter of concern.~~
- 18 8- 6. Require the licensee to provide free public or charitable service for a defined
19 period.
- 20 9- 7. Impose fines, not to exceed five thousand dollars for any single disciplinary action;
21 ~~in a case of failure to comply with statutory reporting requirements, or a violation of~~
22 ~~examination security.~~ Any fines collected by the state board of medical examiners
23 must be deposited in the state general fund.

24 **SECTION 5. AMENDMENT.** Section 43-17-31 of the 1997 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 **43-17-31. Grounds for disciplinary action.** Disciplinary action may be imposed
27 against a physician upon any of the following grounds:

- 28 1. The use of any false, fraudulent, or forged statement or document, or the use of
29 any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of
30 the licensing requirements.

- 1 2. The making of false or misleading statements about the physician's skill or the
- 2 efficacy of any medicine, treatment, or remedy.
- 3 3. The conviction of any misdemeanor determined by the board to have a direct
- 4 bearing upon a person's ability to serve the public as a practitioner of medicine or
- 5 any felony. A license may not be withheld contrary to the provisions of chapter
- 6 12.1-33.
- 7 4. Habitual use of alcohol or drugs.
- 8 5. Physical or mental disability materially affecting the ability to perform the duties of
- 9 a physician in a competent manner.
- 10 6. The performance of any dishonorable, unethical, or unprofessional conduct likely
- 11 to deceive, defraud, or harm the public.
- 12 7. Obtaining any fee by fraud, deceit, or misrepresentation.
- 13 8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or
- 14 impaired person.
- 15 9. The violation of any provision of a medical practice act or the rules and regulations
- 16 of the board, or any action, stipulation, condition, or agreement imposed by the
- 17 board or the commission on medical competency.
- 18 10. The practice of medicine under a false or assumed name.
- 19 11. The advertising for the practice of medicine in an untrue or deceptive manner.
- 20 12. The representation to a patient that a manifestly incurable condition, sickness,
- 21 disease, or injury can be cured.
- 22 13. The willful or negligent violation of the confidentiality between physician and
- 23 patient, except as required by law.
- 24 14. The failure of a doctor of osteopathy to designate that person's school of practice
- 25 in the professional use of that person's name by such terms as "osteopathic
- 26 physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
- 27 15. Gross negligence in the practice of medicine.
- 28 16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of
- 29 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, except those relating to psychiatric treatment which must be governed by board rule, to another physician or to supply copies thereof to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative. 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 commission on medical competency~~
investigative panel, their investigators, or representatives, information legally
requested by the board or the ~~commission~~ investigative panel.

29. The practice of telemedicine from a place outside this state without acting in
consultation with another licensed physician who is physically located in this state
and who is primarily responsible for the care of the patient.

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.

SECTION 6. A new section to chapter 43-17 of the North Dakota Century Code is
created and enacted as follows:

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.