

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1157
(Human Services Committee)
(At the request of the State Board of Medical Examiners)

AN ACT to amend and reenact sections 23-34-03, 43-17-03, 43-17.1-01, 43-17.1-02, 43-17.1-04, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, 43-17.1-08, and 43-17.1-09 of the North Dakota Century Code, relating to the commission on medical competency; and to repeal section 43-17.1-03 of the North Dakota Century Code, relating to compensation of members of the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-34-03. Peer review records - Privileged - Exceptions. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

1. Records gathered from an original source that is not a peer review committee;
2. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. Peer review records subpoenaed in an investigation conducted by ~~the commission on medical competency~~ an investigative panel of the board of medical examiners pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1. Any peer review records provided to ~~the commission~~ an investigative panel of the board of medical examiners or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17-03. State board of medical examiners - How appointed - Qualifications.

1. The governor shall appoint a state board of medical examiners consisting of ~~ten~~ eleven members, eight of whom are ~~M.D.'s~~ doctors of medicine, one of whom is a ~~D.O.~~ doctor of osteopathy, and ~~one~~ two of whom ~~is~~ are designated as a public ~~member~~ members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.

- d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. ~~The~~ Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. A person appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 3. AMENDMENT. Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "~~Commission~~" "Board" means the ~~commission on medical competency~~ state board of medical examiners.
2. "~~Commissioner~~" means the ~~commissioner of insurance~~.
3. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

SECTION 4. AMENDMENT. Section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-02. ~~Commission on medical competency~~ Investigative panels of the board.

1. ~~There is hereby created a commission on medical competency which must consist of:~~
 - a. ~~Two members of the state board of medical examiners appointed by the chairman of the board to two year terms, except one of the initial appointees must be appointed for a term of three years.~~
 - b. ~~Two physicians in active practice who have been actively engaged in the practice of medicine in this state for at least eight years, selected by the state medical association. Members so selected shall serve three year terms, except one of the initial members so selected shall serve for only two years.~~
 - c. ~~The commissioner and the attorney general, or their designated representatives.~~

~~No appointed member of the commission may serve more than two terms consecutively. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of five members of the board, excluding the president. Four members of each panel must be physician members of the board. One member of each panel must be a public member of the board. In addition, the president of the board shall serve on both investigative panels.~~

2. ~~The commission~~ Each investigative panel shall select a chairman and a vice chairman from its own members, and a secretary who may or may not be a member of the ~~commission panel~~ and who shall keep minutes of all meetings thereof.
3. ~~The commission may employ an executive secretary,~~ Each investigative panel may engage investigators, medical experts, and such other experts as the ~~commission panel~~ in its discretion determines to be necessary to accomplish its purposes. The attorney general

shall provide counsel to the ~~commission~~ investigative panels, but ~~the commission an investigative panel~~ may employ special counsel in any proceeding wherein it decides it is advisable.

4. Cases for investigation must be assigned to each investigative panel by the president of the board.

SECTION 5. AMENDMENT. Section 43-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-04. ~~Commission meetings~~ Meetings of investigative panels. Meetings of the ~~commission~~ investigative panels must be held at least once annually in Bismarck, North Dakota, and at such other place or places within the state and at such times as ~~the commission~~ each investigative panel may determine. A majority of the members of ~~the commission an investigative panel~~ constitutes a quorum, and no action of ~~the commission an investigative panel~~ is effective without the concurrence therein of a majority of ~~its~~ the members present at the time of the decision. Special meetings of ~~the commission an investigative panel~~ may be called at any time by the chairman or vice chairman of ~~the commission an investigative panel~~ or upon the written request of any three members of ~~the commission an investigative panel~~.

SECTION 6. AMENDMENT. Section 43-17.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. ~~All residents have the right to~~ Any person may make or refer written complaints to the ~~commission investigative panels~~ with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that the ~~commission an investigative panel~~ review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes a report to the ~~commission on medical competency investigative panels~~ 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 investigative panel~~ shall conduct the investigation as it deems necessary to resolve the matter as it deems appropriate. The ~~commission investigative panel~~ shall determine whether ~~the~~ a formal hearing should be held to determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by ~~section 43-17-31 law.~~
2. If the ~~commission investigative panel~~ determines that a formal hearing should be held to determine whether any licensed physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by ~~section 43-17-31 law~~, it shall inform the respondent physician, physician assistant, or fluoroscopy technologist involved of the specific charges to be considered by serving upon ~~him~~ that person a copy of a formal complaint filed with the board of medical examiners for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the ~~commission investigative panel~~ may not participate in any proceeding before the board relating to said complaint. The complaint must be prosecuted before the board by the attorney general or one of ~~his~~ the attorney general's assistants.
3. If ~~the commission~~ an investigative panel finds that there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The ~~commission investigative panel~~ shall provide written notice to the individual or entity filing the original complaint and the person who is the subject of the complaint of the ~~commission's~~ investigative panel's final action or recommendations, if any, concerning the complaint.

SECTION 7. AMENDMENT. Section 43-17.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to commission on medical competency—When required Reporting requirements. A physician, a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the commission investigative panel of the board. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the commission investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee ~~the commission~~ an investigative panel shall, or on its own motion ~~the commission~~ an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or 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. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or ~~radiology~~ fluoroscopy technologist who violates this section is subject to administrative action by the North Dakota state board of medical examiners as specified by law or by administrative rule.

SECTION 8. AMENDMENT. Section 43-17.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-06. ~~Commission powers~~ Powers of the board's investigative panels. The ~~commission~~ board's investigative panels may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician, physician assistant, or fluoroscopy technologist under investigation. The confidentiality of the records by any other statute or law does not affect the validity of ~~the commission's~~ an investigative panel's subpoena nor the admissibility of the records and board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination, or chemical dependency evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators when necessary.
6. Hold confidential conferences with any complainant or any physician, physician assistant, or fluoroscopy technologist with respect to any complaint.
7. File a formal complaint against any licensed physician, physician assistant, or fluoroscopy technologist with the state board of medical examiners.

SECTION 9. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-08. ~~Communication to~~ commission investigative panel privileged. Communications to the ~~commission investigative panels~~ and ~~its~~ their agents are privileged, and no member of the ~~commission investigative panels~~ nor any of ~~its~~ their agents may be compelled to testify with respect thereto in any proceedings except in ~~these~~ formal proceedings conducted before the board of medical examiners ~~wherein the competency of a physician is at issue~~. All records of the ~~commission investigative panels~~, except ~~its~~ their financial records, are confidential. Notwithstanding the provisions of this section, if ~~the commission~~ an investigative panel determines that the records of the ~~commission investigative panel~~ disclose a possible violation of state or federal criminal law, the ~~commission investigative panel~~ may provide the records to the appropriate law enforcement agency.

SECTION 10. AMENDMENT. Section 43-17.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-09. ~~Commission immunity~~ Immunity. Members of the ~~commission investigative panels~~, special masters appointed by ~~it~~ an investigative panel, and agents of ~~the commission an investigative panel~~, are immune from any liability of any kind based upon any acts or omissions in the course of the performance of responsibilities in an official capacity except liability for bodily injury arising out of accidents caused, or contributed to, by the negligence of the member or agent.

SECTION 11. REPEAL. Section 43-17.1-03 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1157.

House Vote: Yeas 98 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State