



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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HOUSE HUMAN SERVICES COMMITTEE
MONDAY, MARCH 13, 2023

TESTIMONY OF LISA BLANCHARD
NORTH DAKOTA STATE BOARD OF CHIROPRACTIC EXAMINERS
SENATE BILL NO. 2064

Chairman Weisz, members of the Committee.

I am Lisa Blanchard, Executive Director for the North Dakota State Board of Chiropractic Examiners and I appear on their behalf. The Board stands in support of this bill and recommends a **DO PASS** for Senate Bill 2064.

As background, the Board was involved in a lawsuit that was appealed to the Supreme Court of North Dakota and resulted in an opinion from the same. Included in the online testimony is a copy of that opinion issued in May 2022 (document number 13156) for your review and consideration. At issue in this lawsuit was whether an administrative law judge appropriately granted summary judgment in a disciplinary case. In the analysis of this issue, the Court referenced a portion of the Board's enabling act, specifically North Dakota Century Code Section 43-06-15, which, on its face, indicates that prior to each disciplinary action taken by the Board, a hearing under N.D.C.C. ch. 28-32 must be held. The proposed bill would amend that language and just require that the matter be addressed under N.D.C.C. ch. 28-32, the Administrative Agencies Practice Act.

When a disciplinary case comes before the Board, the Board considers the complaint and requests a response from the licensee to all materials obtained from the complainant. After the

investigation, the Board considers whether a law or rule of the Board was violated. If the Board finds reasonable cause that a law or rule was violated, the Board first attempts to informally resolve the disciplinary issue through settlement. If informal settlement attempts fail to resolve the matter, the case is directed to the Office of Administrative Hearings to be handled under chapter 28-32.

This language allows the Board to utilize all of the tools allowable under ch. 28-32 to resolve a case. In some cases, there are no facts in dispute and a hearing is not required. In these instances, an Administrative Law Judge may grant summary judgment as an appropriate method of resolving the case for both parties. This language would clarify to the licensees what they can expect through the disciplinary process, and that a hearing might not occur in all cases, either on motion of the board or the licensee and after certain legal standards are met.

Additionally, there are times when a licensee refuses to engage in the investigation or disciplinary process. The Board may not be able to locate the licensee, or the licensee may choose to ignore the correspondence from the Board. In these cases, the option available to the Board in 28-32 to address the disciplinary violation is through a default judgment. This legal process allows the Board to resolve the case through the Office of Administrative Hearings when the licensee will not interact with the Board. Under the plain language of the enabling statute, it appears that the Board would have to have a full evidentiary hearing in these cases, when a much easier pathway for resolution is available.

The cases that require hearings will, of course, still have hearings. This is not meant to limit the ability of a licensee to have an administrative hearing when one is warranted, and the effect of the language will not result in the right of a licensee to a hearing being diminished in

any way. The Administrative Law Judge retains the discretion to hold a hearing pursuant to the criteria set forth in 28-32. Additionally, both the licensee and the Board retain the right to appeal any decisions to the District Courts and up to the Supreme Court.

The Board is requesting that this language be clarified. Again, the Board supports this bill and recommends a **DO PASS** on Senate Bill 2064.

Thank you for your time and I would stand for any questions the committee may have.

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