



# North Dakota State Board of Dental Examiners

PO Box 7246, Bismarck, ND 58507-7246 • [info@nddentalboard.org](mailto:info@nddentalboard.org) • 701.258.8600 • <https://www.nddentalboard.org>

## Senate Workforce Development Committee

March 20, 2025; 2:30 pm

State Capitol; Fort Lincoln Room

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Testimony of the North Dakota State Board of Dental Examiners

HB 1512

### **I. Introduction and Background**

Chair Wobbema and members of the Senate Workforce Development Committee, my name is David Schaibley—Executive Director of the North Dakota State Board of Dental Examiners. I'm here today providing the Board's testimony respectfully opposing HB 1512.

In recent years, the Board has made significant changes designed to increase efficiency in many aspects of its work. One area where it has focused those efforts is in its investigation and processing of complaints. The Board seeks to share its concerns that the passage of HB 1512 would undo those efficiencies while also having potential negative impacts on the complainants, patients, dental staff, and others who might be involved in a Board investigation.

### **II. Change on Page 1; Line 11**

A past criticism of the Board was that its administration of complaints was too slow. It thoughtfully assessed those criticisms, and implemented a more efficient process that effectively eliminated those criticisms without negatively impacting fairness, patient rights, or the results of Board investigations. It did so by making more efficient use of a law that has been in place for decades. That law allows the Board to assign the investigation of a complaint to either a committee or to a single board member.

For relatively non-complicated complaints the Board assigns a single Board member to investigate. Efficiencies are gained because a single investigator can work

steadily and without pausing their work to post public meeting notices and hold committee meetings before taking next steps.

But in more complex matters, the Board has found it efficient to use a complaints committee. In these files, efficiencies can be gained through the use of the committee because more complex investigations often result in heavier workloads, and sharing that work among multiple Board members can be effective.

Whether a single Board member or a committee investigates a complaint, however, both sides are assured of the same level of fairness. Fairness is ensured because every complaint is still reviewed by the full Board, and the Board can always redirect more investigation before it arrives at a disciplinary decision.

Because the change at P1; L11 would mandate the use of a committee for every complaint, the Board is concerned its complaint processing will be substantially slowed and return us to a time when dissatisfaction with our process was more prevalent.

### **III. Change on Page 1; Line 14-15**

The second proposed change modifies the way sensitive records related to complaint investigations are released. While at first glance the wording of this change seems to only have an impact on the release of a single type of document, the Board feels obligated to raise its potentially more far-reaching impacts.

Before sharing those impacts, it may be helpful to first summarize how these documents are handled today. Under existing law, the entire complaint file (including the response) is an exempt record during the time when the investigation is going on. Then, if the Board decides discipline is warranted, the entire complaint file (including the response) becomes an open record. But of course, a patient's confidential medical information is not released to third parties.

This process has worked exceptionally well for decades, and has never been a reason for concern. Changing them could undo protections and negatively impact those involved in the complaint process as follows.

#### **A. Impact on Patients the Board is Obligated to Protect**

The language mandates that complainants are to be given the dental staff's responses. One concern is that the complainant might not necessarily be the patient.

Anyone can submit a complaint—whether or not they are a patient. Even though the Board can withhold medical records, a response would likely still contain sensitive information the patient would rather keep private. And once the documents are released to that third party, the documents could be used for purposes the patient does not appreciate, could be posted online, could cause harm to the patient, etc. The Board is concerned that it will not only have a reduced ability to protect patients and the public, but that this change may actually cause the Board to harm patients by releasing their information to a third party.

#### B. Impact on the Effectiveness and Efficiency of Board Investigations

Assistants, hygienists, and dentists will be aware that responses they file on any complaint will always be released—with its potential harm to the patient and perhaps even to the dental staff in having their words released and potentially publicly circulated. Assistants, hygienists, and dentists might be reluctant, then, to fully participate in Board investigations. Without full participation, the Board investigations may be less comprehensive, and the Board may be less able to arrive at the right disciplinary decision. This could hinder the Board's ability to effectively carry out its responsibilities of investigating complaints and protecting the public.

Additionally, it seems likely that the progress toward efficient processing of complaints may be lost if assistants, hygienists, and dentists are more hesitant to provide complete responses to the Board, and if patients intervene with concerns that their records might get released to third parties.

#### C. Impact on Perceptions of the Government

Customer dissatisfaction is a part of doing business—and dental offices are no exception. Disappointed consumers can always make negative statements about their dental offices or any business or their neighbors, online, or elsewhere. That is to be expected. And harm can result from those criticisms.

But this proposed change could cause the government itself (through the Board) to increase that potential harm when complaints are filed with it. Specifically:

- When customer dissatisfaction statements are posted online or out in the world in general, the businesses or employees are not forced to respond.

- But when complaints are filed with the Board, it's a different story. It triggers the Board's obligation to require a response, and it triggers the dental staff's requirement to respond.

That government-forced creation of a response document becomes the issue. Under current law, if the Board concludes that no discipline is warranted, the response is not released. The revised law would mandate that the Board release that response—which means the recipient can publicly share it and potentially use that Board-mandated response to increase harm.

The Board's concern is that forcing it to play that role seems likely to increase distrust and frustration with the government and the Board, and it would seem to make dental staff more reluctant to participate in the complaint investigations.

#### D. Transparency and an Already-Effective Complaint Process

To the extent this language is seen as a way to increase transparency or the effectiveness of complaint processing, the Board agrees that transparency in government is beneficial. It shares, however, that its existing open records laws already provide for a great deal of transparency.

- a. The dental records are the property of the patient, and as such, patients can always obtain their full dental records.
- b. The Board is allowed to protect patient medical information and records, and does not release them to third parties.
- c. Complaint files become public once the Board decides discipline is warranted.
- d. The laws promote full participation in investigations by all parties to a complaint.
- e. The laws allow the Board to gather complete information in its investigations.
- f. The public is protected because these laws help ensure wrongful conduct is disciplined.
- g. The laws allow the Board to do its regulatory work without adding harm to the patient or dental staff.

#### **IV. Conclusion**

In conclusion, the existing laws and safeguards related to the Board's complaint process have worked exceptionally well for decades, and have not been a concern. Changing them could undo those safeguards and the law's effectiveness. While the Board will readily and fully implement these changes if they are adopted, it seeks to make the Committee aware of the potential harm they could have and the lack of discernible benefits they might provide.

#### **Prepared and Presented by:**

David Schaibley

Executive Director of the North Dakota State Board of Dental Examiners

[david@noddentalboard.org](mailto:david@noddentalboard.org); 701-258-8600