

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

HOUSE BILL NO. 1135
(Political Subdivisions Committee)
(At the request of the Board of Medical Examiners)

AN ACT to amend and reenact sections 43-17-31, 43-17-32.1, subsection 1 of section 43-17.1-05, and section 43-17.1-05.1 of the North Dakota Century Code, relating to grounds for disciplinary action, suspensions, complaints, and reports under the board of medical examiners; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
4. Habitual use of alcohol or drugs.
5. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. Obtaining any fee by fraud, deceit, or misrepresentation.
8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or the commission on medical competency.
10. The practice of medicine under a false or assumed name.
11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.

14. The failure of a doctor of osteopathy to designate ~~his~~ that person's school of practice in the professional use of ~~his~~ that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of 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 ~~furnish the board, its investigators or representatives, information legally requested by the board~~ comply with the reporting requirements of section 43-17.1-05.1.
- ~~20.~~ 20. The failure to transfer medical records, except those relating to psychiatric treatment which ~~shall~~ must be governed by board rule, to another physician or to supply copies thereof to the patient or to ~~his or her~~ the patient's representative when requested to do so by the patient or ~~his or her~~ the patient's designated representative. A reasonable charge for record copies may be assessed.
- ~~21.~~ 20. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- ~~22.~~ 21. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
- ~~23.~~ 22. 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.~~ 23. The violation of any state or federal statute or regulation relating to controlled substances.
- ~~25.~~ 24. 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.~~ 25. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- ~~27.~~ 26. The failure to properly monitor a physician assistant or an emergency medical technician.
- ~~28.~~ 27. The failure to furnish the board or the commission on medical competency, their investigators, or representatives, information legally requested by the board or the commission.

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 2. AMENDMENT. Section 43-17-32.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, ~~based on verified evidence, the board has verified evidence that~~ probable cause requires to believe that the suspension of a physician's license is required to reasonably

protect the public from imminent or critical harm, the board may order a temporary suspension ex parte.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 3. AMENDMENT. Subsection 1 of section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. All residents have the right to make or refer written complaints to the commission with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Any person who, in good faith, makes a report to the commission on medical competency 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 shall conduct ~~such~~ the investigation as it deems necessary to resolve the matter as it deems appropriate. The commission shall determine whether the physician has committed any of the grounds for disciplinary action provided for by section 43-17-31.

SECTION 4. AMENDMENT. Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to commission on medical competency - When required. A physician, ~~the state medical association and its components~~ 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, or a court in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine 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. 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 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 shall, or on its own motion, the commission may, investigate any evidence that appears to show a licensee is or may be ~~medically incompetent, guilty of unprofessional conduct, or mentally or physically incapable of the proper practice of medicine~~ have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. Any person required to report under this section who makes a report in good faith may not be 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. 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 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.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1135.

House Vote: Yeas 94 Nays 0 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State