

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2301

Introduced by

Senators Lee, DeMers, Krebsbach

Representatives Keiser, Kilzer, Rose

1 A BILL for an Act to create and enact a new chapter to title 23 of the North Dakota Century
2 Code, relating to the confidentiality of and the privilege governing medical peer review records;
3 to amend and reenact sections 31-08-01 and 43-17.1-05.1, and subsection 1 of section
4 43-17.1-06 of the North Dakota Century Code, relating to records and proceedings of medical
5 review committees and reports to the commission on medical competency; to repeal section
6 23-01-02.1 of the North Dakota Century Code, relating to medical peer review confidentiality
7 and privilege; to provide for retroactive application; and to declare an emergency.

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

9 **SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and
10 enacted as follows:

11 **Definitions.** As used in this chapter:

- 12 1. "Health care organization" means any hospital, hospital medical staff, clinic,
13 long-term or extended care facility, ambulatory surgery center, emergency medical
14 services unit, physician, group of physicians operating a clinic or outpatient care
15 facility, combination of these entities, or federally designated state peer review
16 organization.
- 17 2. "Health care provider" means a physician or other person licensed, certified, or
18 otherwise authorized by the law of this state to provide health care services.
- 19 3. "Peer review committee" means any committee of a health care organization,
20 composed of health care providers, employees, administrators, consultants,
21 agents, or members of the health care organization's governing body, which
22 conducts professional peer review.
- 23 4. "Peer review records" means all data, information, reports, documents, findings,
24 compilations and summaries, testimony, and any other records generated by,

1 acquired by, or given to a peer review committee as a part of any professional peer
2 review. The term does not include original patient source documents. Peer review
3 records also include all communications relating to a professional peer review,
4 whether written or oral, between peer review committee members, peer review
5 committee members and the peer review committee's staff, or peer review
6 committee members and other persons participating in a professional peer review,
7 including the person who is the subject of the professional peer review.

- 8 5. "Professional peer review" means all procedures a peer review committee uses or
9 functions it performs to monitor, evaluate, and take action to review the medical
10 care provided to patients by health care organizations or health care providers to
11 improve patient care and treatment or to provide quality assurance.

12 **Peer review records - Confidentiality.** Peer review records are confidential and may
13 be used by a peer review committee and the committee members only for conducting a
14 professional peer review.

15 **Peer review records - Privileged - Exceptions.** Peer review records are privileged
16 and are not subject to subpoena or discovery or introduction into evidence in any civil or
17 administrative action, except:

- 18 1. Records gathered from an original source that is not a peer review committee;
19 2. Testimony from any person as to matters within that person's knowledge, provided
20 the information was not obtained by the person as a result of the person's
21 participation in a professional peer review; or
22 3. Peer review records subpoenaed in an investigation conducted by the commission
23 on medical competency pursuant to chapter 43-17.1 or subpoenaed in a
24 disciplinary action before the board of medical examiners pursuant to section
25 43-17-30.1. Any peer review records provided to the commission or introduced as
26 evidence in any disciplinary action before the board are confidential and are not
27 subject to subpoena, discovery, or admissibility into evidence in any civil or
28 administrative action, and are not public records subject to section 44-04-18 and
29 section 6 of article XI of the Constitution of North Dakota.

30 **Peer review committee - Mandatory reports.** A peer review committee shall report to
31 the commission on medical competency any information that indicates a probable violation of

subsections 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

Liability of health care provider to patient. This chapter does not relieve any health care provider of any liability that the provider has incurred or may incur to a patient as a result of furnishing health care services to the patient.

Limitation of liability.

1. A person furnishing peer review records to a peer review committee with respect to any patient examined or treated by a health care provider is not, by reason of furnishing the records, liable in damages to any person or for willful violation of a privileged communication.

2. A health care organization, health care provider, or member of a peer review committee is not liable in damages to any person for any action taken or recommendation made regarding a professional peer review, if the organization, provider, or committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the organization, provider, or committee member.

SECTION 2. AMENDMENT. Section 31-08-01 of the North Dakota Century Code is amended and reenacted as follows:

31-08-01. Admissibility in evidence of business records - Term business defined - Exception. A record of an act, condition, or event ~~shall be~~ is competent evidence insofar as relevant, if:

1. The custodian or other qualified witness testifies to its identity and the mode of its preparation.
2. It was made in the regular course of business, at or near the time of the act, condition, or event.
3. The sources of information and the method and time of preparation, in the opinion of the court, were such as to justify its admission.

For the purpose of this section, the term "business" ~~shall include~~ includes every kind of business, profession, occupation, calling, or operation of institutions, whether carried on for profit or not. ~~The records and proceedings of any regularly constituted medical review~~

~~committee of a licensed medical hospital or a medical society in this state shall not be subject to discovery or admissible as evidence.~~

SECTION 3. 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 health care institution in the state, a state agency, a law enforcement agency in the state, or a court in the state having actual knowledge that a licensed physician may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine shall promptly report that information 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, 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. ~~Any~~ A person required to report under this section who makes a report in good faith ~~may~~ is not be subject to criminal prosecution or civil liability for making the report. 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 section 1 of this Act 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.

SECTION 4. AMENDMENT. Subsection 1 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician under investigation. The confidentiality of the records by any other statute or law does not affect the validity of the commission's subpoena nor the

1 admissibility of the records and board proceedings; however, the proceedings and
2 records of a committee that are exempt from subpoena, discovery, or introduction
3 into evidence under section ~~23-01-02.1~~ 1 of this Act are not subject to this
4 subsection.

5 **SECTION 5. REPEAL.** Section 23-01-02.1 of the North Dakota Century Code is
6 repealed.

7 **SECTION 6. RETROACTIVE APPLICATION OF ACT.** Section 1 of this Act applies
8 retroactively to peer review records created before the effective date of this Act.

9 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.