



State of North Dakota
Doug Burgum, Governor

OFFICE OF THE EXECUTIVE DIRECTOR
1906 E Broadway Ave
Bismarck ND 58501-4700
Telephone (701) 328-9535
Fax (701) 328-9536
STATE BOARD OF PHARMACY

Mhardy@ndboard.pharmacy
www.nodakpharmacy.com

Mark J. Hardy, PharmD, R.Ph.
Executive Director

Senate Bill No 2266 – Occupational Professional Character

Senate Government and Veterans Affairs Committee – JW216

10:00 AM - Thursday – February 11th, 2021

Chairman Vedaa, members of the Senate Government and Veterans Affairs Committee, for the record I am Mark J. Hardy, PharmD, Executive Director of the North Dakota State Board of Pharmacy.

I appreciate the opportunity to discuss with you our concerns on Senate Bill 2266 today.

While I understand the legislation's intention and the broader discussion on the elimination of "moral" conduct references in licensure statutes, I do think it would be wise to really examine how licensure Boards specific to North Dakota may be applying these character clauses to licensure decisions. On the surface, many view these clauses as being restrictive to paths to licensure. However, I truly believe the application of these clauses, in North Dakota, are not preventing individuals from practice and may actually be leading to more individuals being given opportunities to enter a profession. I can firmly attest to this on behalf of our Board.

Allow me to first acknowledge that "*Good Moral Conduct and Character*" clauses are very subjective. The ethical considerations behind them modify over time. What may have been deemed as unethical twenty years ago, may be approached in a totally different light today. The alternative in creating more direct preclusions to licensure including criminal convictions or other character issues, such as misrepresentation by an applicant or not being forthright in their interactions with the licensure Boards, can be very difficult and may prevent opportunities for those recovered from their past decisions.

To my knowledge, the Board of Pharmacy has not used good moral character as grounds for denial of an application. Certainly, when we get individuals that may have court convictions or have had past licensure issues in other states who apply for licensure, those things are dealt with individually based on the case. The individual always gets the chance to meet with the Board to explain their actions, for determination by their peers. Most often, that individual has been approved for licensure. Upon an unsatisfactory decision, the licensee can always appeal a decision of the Board. Speaking on behalf of our Board, we always have an open door for individuals that may inquire about past violation preempting them from entering a profession.

I would challenge that a better approach to simply removing these references would be to take a hard look at how they are applied in the State, to determine if there are indeed Boards

that are utilizing these references in a way that prevents individuals from obtaining a license, where the public at large would have expected the individual to get licensed.

In my opinion, the alternative, without “*Good Moral Conduct and Character*” is to explore more definite rules on preempting licensure based on certain or specific criminal convictions, or falsification of records, which again could be a moving target. In this instance this does not seem to be an approach that is most logical on behalf of the applicant or on behalf of the public of North Dakota to be served by those individuals.

In all honesty, I do believe there are other states where “*Good Moral Conduct and Character*” clauses may have been used in a punitive manner, which has given them a bad designation. Guided by the ethical consideration of a profession, as well as the individual stories and circumstances of an individual, Administrative Boards need to be given the ability to make subjective decisions on licensure. More often than not, I believe the licensure Boards of North Dakota, including the Board of Pharmacy, give more than ample opportunity for those individuals to move on from past mistakes or challenges and give them every opportunity to obtain licensure and practice their vocation while still ensure the public will not be disadvantaged.

It is our opinion, that removing these clauses and moving to a more objective nature will only have the opposite effect to what I believe those who sponsored Senate Bill 2266 and support this intend.

The Board of Pharmacy respectfully asks for Do NOT Pass vote on SB 2266. As a consideration, it may be appropriate for the Legislature to study this topic so a strong look can be given how these are applied in the state.

Thank you for listening to my testimony on this complicated topic and I will be happy to answer any questions.