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Testimony opposing HB 1151

Chairman Lee and members of the committee:
I'm here in support of telehealth in dentistry. However, I urge your rejection of this bill for reasons I believe are clear and will be highlighted in this testimony.

Thought now retired from practice, I have consistently had, and continue to enjoy, a keen interest in Dental Ethics as well as mechanisms for delivery of optimal care. Probably as a result, – I was able to serve as the primary editor of a significant revision and updating of the Principles of Ethics and Codes of Professional Conduct for a dental specialty group in 2017. More recently, I was also asked to participate in a significant edit of the Clinical Practice Guidelines for orthodontics to be adopted by the group next month. These documents are well known and used throughout the United States and Canada, as well as in many other countries.

With due respect for those involved and despite their good intentions, unfortunately HB1151 contains many errors, ambiguities, omissions and incorrect statements that conflict with current laws and regulations regarding dentistry or provide ambiguity that could open the door to circumvent current laws and regulations applicable to dentistry.

I would point out that the statement made on page 2, lines 10-12 of the bill is not true. The American Dental Association's *Principles of Ethics and Code of Professional Conduct*, the preeminent document regarding ethics related to the practice of dentistry, contain no such requirement. The first sentence is instead an ***opinion*** of what Ethics say about the practice of dentistry. I don't believe that "opinions" belong in statutes as a means to validate content of the statute. This opinion, falsely based, improperly implies justification for what follows in the bill.

Lines 13 through 17 provide a definition of a "bona fide relationship." Although important to have a doctor-patient relationship, this statement alone does not assure that all types of dental issues can, or

should, be managed through telehealth communications simply based on a "bona fide relationship." One example, related to a patient with a toothache for example, frequently requires the dentist to apply thermal (hot and cold) tests to suspect teeth to determine the potential need for endodontic (root canal) treatment, rather than relatively simple restorative care. Only a dentist has the educational background and knowledge to perform such diagnostic testing, properly interpret the findings and determine appropriate care. These circumstances are similar to when I have sent high quality digital images to my dermatologist in Bismarck to show skin lesions I suspect are cancerous. His response is nearly always, "I want you to come see me." When I do, he looks at the spot I've noticed; slides his finger over the top to determine it's texture; presses on it to see if it has any nodular component; uses some sort of magnifier with a light which he looks through like binoculars; then says either "We need to biopsy this one," or "nothing to worry about there." His examination to determine if a biopsy should be done to confirm a diagnosis is precisely parallel to the kind of examination required for dental examinations to determine what additional information is needed to diagnose problems.

Another consideration in support that direct, in-person contact is required for proper care can be found in the proposed draft of the Clinical Practice Guidelines document anticipated to be approved by the American Association of Orthodontists in April 2021 that reads: "Prior to the initiation of tooth movement, in order to protect patient health and safety, an in-person comprehensive dental examination of orthodontic patients should occur by a state-licensed dentist. The dentist shall be currently practicing in the same state in which the dentist is licensed and should be easily searchable and/or able to be contacted." In addition, these Clinical Practice Guidelines further state that, "Dynamic reassessment is fundamental to all forms of orthodontic treatment and requires the direct, professional judgment of a dentist. Referral for adjunctive dental or specialty treatment may at times be part of the process." Clearly, a "bona fide relationship" as defined in this bill is not sufficient to assure public safety without an in-person dental examination.

It is also significant that missing in this bill is any reference to who may facilitate the transfer of information, in whatever form might be used, from the remote location to a dentist during a telehealth/teledentistry event. There is no mention if it must be a dentist, hygienist, assistant on the distant end. As written, someone with no dental education or licensure at all on the distant end would be allowed to accumulating information of various sorts to transmit to the dentist on the receiving end. The omission of this information implies to any dentist reading the proposed law that this in not important. Yet, it is.

Missing is what type of supervision required for the individual on the distant end. Is it a dentist, a hygienist, a dental assistant? HB1151 offers absolutely no guidance, restrictions or designation as to who gathers and transmits any information anywhere under any circumstances, regardless of dental education, authorization or supervision. The bill leaves all of this to the discretion and interpretation. This is reckless. This is also inconsistent with the practice of dentistry as currently required by ND laws and Administrative Rules. Worse yet, it overlooks required safety measures for patients.

Some may argue that the qualifications, education or supervision of the person on the distant end of a telehealth communication facilitating transfer of information is not important. After all, they are "only making photos, asking questions or perhaps making x-rays or gathering patient information or documenting patient complaints or completing informed consent documents." This would not be true. Some of such efforts require educational knowledge, licensure and authorization as well as appropriate supervision for procedures provided on the distant end. HB 1151 omits these essential ingredients.

Dental examinations demand a thorough understanding of numerous elements to assure recognition of the difference between normal and abnormal findings. Dentists are the only dental professional with the educational background necessary to do so within the practice dentistry. Essential elements for education as a dentist includes, but is not limited to the study of:

- Dental anatomy including variations influenced by:
  - Ectodermal dysplasia
  - Osteogenisis imperfecta
  - Dentinogenisis imperfect
  - Ethnicity
  - Hormonal abnormalities
- head and neck anatomy
- joint sounds
- oral aromas
- palpated physical conditions
- signs and symptoms
- morphology
- physiology
- oral pathology
- neurology of the head and neck

- Developmental Craniofacial abnormalities
  - Treacher Collins Syndrome
  - Cleft lip

- Cleft palate
- Hemifacial microsomia
- Vascular malformation
- Hemangioma

- And more

Dental assistants, qualified dental assistants, registered dental assistants and dental hygienists do not receive all such elements as part of their dental education. The ability to differentiate between health and abnormal variations of health is required to determine what elements are essential for a proper dental examination. The need for additional, modified, necessary or unnecessary elements to enable a proper examination and correct diagnosis require on-sight and hands-on attention by a dentist. For this reason, HB1151's statement on page 2, lines 19-21 is incorrect. A dental examination CANNOT be routinely equivalent to an in-person examination through telehealth. This is impossible. This sentence further asserts that an "evaluation" is, or can be, equivalent to an "examination." There is no factual basis for this statement. It is not possible to achieve an "evaluation equivalent to an examination."

Because of this, dentists must be physically present, in person, to properly examine a dental patient. Any claim that "... store-and-forward technology for appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like in-person examination or evaluation meets this [examination] standard" [typo error included] cannot be assured. A dentist must be physically present to properly conduct an "examination," exercising clinical skills and utilizing educationally acquired knowledge to recognize and implement the specific needs for a complete and proper examination.

North Dakota dentists have been using telecommunications for a long time – transferring digital records they obtain as required to dental laboratories for construction of crowns and bridges, x-rays for consultation by another dentist and other purposes. Telehealth benefits each profession in its own unique way. But telehealth is not a "one size fits all" proposition. As technology advances, the profession's underlying code of ethical conduct, standards of care and laws pertaining to dentistry need not change. Administrative Rules may require continued modification – much as those currently in process that will soon be reviewed by the Legislative Council. HB 1151 deserves to be set aside based on these facts.

Please vote DO NOT PASS regarding HB 1151.
Thank you,