

Senate Human Services Committee
Wednesday, March 30, 2021 10:30 PM
Sakakawea Room, State Capitol
HB 1151 - Opposition
Relating to telehealth and practice of dentistry

Good morning Chairman Lee and members of the Committee. I am Rita Sommers, and I have served as the Executive Director of the North Dakota Board of Dental Examiners (Board) since 2003 and am here to urge you, DO NOT PASS HB 1151.

43-28-03 related to Members – Appointment and Terms of office.

The first issue I would like to address is 43-28-03 related to Members – Appointment and Terms of office. The Board has made their opinion known several times that adding a dental assistant would be a welcome addition to the Board. The Board has also specifically avoided amending any element of law with a requirement to name any specific dental specialist to the Board. In addition, given the 2015 decision regarding the North Carolina State Board of Dental Examiners v. Federal Trade Commission, it may be wiser to have two consumer members rather than another dentist market-participant.

Secondly, the ND Century Code does not authorize the Board to license specialists. (Several states do). The Board licenses competent dentists, hygienists and registers dental assistants. Therefore, the Board determined it would be inappropriate to select language singling out one specialty. Dr. Tanabe, an Oral & Maxillofacial Surgeon from Grand Forks, was recently appointed to the Board for a five-year term. It is our hope that Dr. Tanabe, whose valuable contribution was instrumental in the review and recommendations for administrative rules regarding anesthesia and sedation, will have the opportunity to continue to serve on the Board as well.

Letters submitted to the Senate Committee by the NDDA

1. January 7, 2021 – Regarding COVID-19 and dentists administering vaccines: The Board does not have the legal authority to authorize dentists to administer the vaccine. Doing so would violate state law and could be considered unpromulgated rule making. It would require either a legislative change or an Executive Order from the Governor. I would also note that dentists do not administer any other vaccinations. The Board's legal council advised the Board accordingly. The letter posted as testimony related to HB 1151 on the legislative assembly's web site was addressed at the Board's January 15, 2021 meeting. During the Board's discussion of the matter, Ms. Brunelle, NDDoH nurse, stated there is currently not a distribution problem or shortage of personnel capable of providing the vaccines. This information is reflected in the meeting minutes.

2. July 2, 2020 – Regarding dentist's scope of practice and COVID-19 testing: The AAG's opinion regarding COVID testing was that testing is outside the scope of the practice of dentistry and therefore could not be completed by dentists. The dental board COULD NOT authorize COVID testing without conflicting with state law. The practice of dentistry as defined by NDCC 43-28-03, states:

"Practice of dentistry" means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures. The issue of whether or not dentists could be permitted to administer COVID vaccinations was addressed at the Board's 9/18/2020 meeting.

3. May 6, 2020 – Regarding guidelines for dental offices who were/are reopening during the COVID pandemic.

The Board does not have the statutory authority to simply adopt guidelines without going through the Administrative Rules process. Had the Board adopted guidelines as requested by the North Dakota Dental Association, this would be considered unpromulgated rule making and not prescribed by our legislative authority. Regarding the statement:

"Practitioners are responsible for the safety of their patients and staff and must operate in a manner consistent with protecting their safety... The Board has the authority to discipline practitioners for willful or negligent disregard for safety."

The part of this statement, *The Board has the authority to discipline practitioners for willful or negligent disregard for safety* is true. However, if someone were to not follow the safety protocols of the ADA, the Board does not currently have language in law to support anything more than a letter of reprimand, possibly. But, if a licensee did not use PPE or follow the appropriate standards recognized by the CDC or other infection control measures required by the industry, the Board could take action with regard to willful or negligent disregard for safety. The Board's AAG, also the attorney for the Department of Health, recognized that guidelines were continually changing. The concern was that the Board did not have the authority to adopt ADA or CDC guidelines. In addition, what would happen if guidelines would change? Guidelines were constantly changing early during the pandemic. Therefore, it was determined that responsibility lies with practitioners to follow the appropriate guidance from the appropriate entities, which is the CDC and ND Department of Health. The dental board does not have the flexibility in its statute to say "you must x,y,z". Ms Brandner repeated frequently that if dentists were to open their practices, they needed to be aware that what the CDC was saying only provide necessary or emergent care should be provided, which at that time contradicted the ADA statement. None of the members of the Board are infection control experts regarding global pandemics. Those more knowledgeable should provide guidance regarding what the "duration of the COVID-19 pandemic" may require. The Board's website has been continually updated with the latest CDC information for licensees.

4. June 5, 2020 – The letter addressing dissatisfaction with the E.D. and the Board's legal counsel.

The letter was sent to Board members only. The Executive Director, the Board's AAG and the Board's hygiene member were excluded from receiving the emailed letter. The letter and how communications are addressed by the Board was discussed at their 6/12/2020 meeting.

There is an inherent conflict between the NDDA and the Board. The Board represents the public; the NDDA represents their membership. In order for the AAG or the Executive Director to act, they must be authorized by the Board. Some matters are authorized. Decisions are not made unilaterally without bringing them to the full Board. The board does not engage in *ex parte* communications. The next meeting of the Board is scheduled to occur in person in Fargo, June 18, 2021.

As a side note, regarding Administrative Rules: The Board followed all required and legal processes. Everyone had the opportunity to comment as required by law. The NDDA provided the Board with an attachment of changes. The changes were 4 specific provisions. The amendments requested were addressed in an open meeting and the Board accepted three of the four changes. The Board addressed every comment received, including those of the North Dakota Dental Association.

For these reasons, the NDBDE recommends a DO NOT PASS on HB1151.

I would be happy to answer any questions.

Rita Sommers

Executive Director, North Dakota Board of Dental Examiners.

