HOUSE HUMAN SERVICES COMMITTEE
MARCH 13, 2023

TESTIMONY OF
NORTH DAKOTA BOARD OF MEDICINE
SENATE BILL NO. 2115

Chair Weisz, members of the Committee, I'm Sandra DePountis, Executive Director of the North Dakota Board of Medicine, appearing on behalf of the Board to present Senate Bill 2115 relating to the regulation and licensure of physicians, resident physicians, and physician assistants in North Dakota.

The Board spent this last biennium reviewing its policies and procedures, rules, and now laws, to remove outdated and redundant language, unnecessary barriers to practice and licensure, and provide updated, clarifying language consistent with national standards and best practices. This is largely considered a "clean-up bill" with some substantive changes on license eligibility.

There were a few amendments to the Bill incorporated on the Senate side – mostly to correct Legislative Council drafting errors. In addition, the Board worked with the Hospital Association on amendments to clarify the reporting requirements in Section 31.

**Updates to North Dakota Century Code Chapter 43-17**

**Section 1**. Updates the definition to include "resident physicians" – currently set forth by rule and now put directly in Century Code.

**Section 2.** Under 43-17 – the Board licenses and regulates physicians, physician assistants, and physician residents. 43-17-02 provides exceptions to the regulations of this chapter – and some language regarding physician assistants and

residents were included in this section making them “exempt” to the chapter. This was confusing as other parts of the chapter specifically reference physician assistants and residents – bringing such licensees back within the chapter’s provisions and regulations. Therefore, to clarify, the sections regarding physician assistants and residents were taken out of this exemption section and put into their appropriate sections. Physician assistants under subsection (1) was removed and put directly in the next section which addresses physician assistant practices. Residents were put into their own section (see Section 6). Other updates to the chapter, and throughout this bill, now clearly delineate whether a law affects physicians, physician assistants, residents, or all “licensees.”

**Section 3.** Moves the language from 43-17-02 regarding physician assistants directly into their law.

**Section 4.** Use of certain words/initials prohibited. The law is being updated to address both physicians and physician assistants and provide clarifying language. The language recognizes that if another profession utilizes a title such as “doctor” under their practice act, they can continue to do so. The proposed language also recognizes that physicians and physician assistants can utilize the initials/titles provided from their education without the need for a license, although they cannot practice without a license.

**Section 5.** As a general rule, in all jurisdictions the practice of medicine occurs in the state the patient is located. If the patient is in North Dakota, the practitioner providing medical services must have a North Dakota license, including if the patient/provider are meeting through electronic means. As you can see, there are a few exceptions currently in the law, but with the practice of telemedicine dramatically

increasing, new exceptions need to be considered to address new issues and situations, while at the same time verifying that sufficient safeguards are in place for patient safety to protect against fraud and abuse. To that end, the Federation of State Medical Boards recently adopted a new Model Policy for Appropriate Use of Telemedicine Technologies in the Practice of Medicine. The new model accounts for numerous scenarios that may deserve an exception to the general licensure rule. The Board is in the process of reviewing this new model and the language being proposed in this section will allow the Board to implement such exceptions into rule.

**Section 6.** Brings the "resident" language from 43-17-02 into its own section.

**Section 7.** Adds an additional physician assistant member to the Board of Medicine. As of December 2022, there are 5,736 active physicians licensed by the Board and 551 physician assistants, so this structure would be more representative of the licensees. This would also allow each Investigatory Panel to have a physician assistant as a member (see Section 31).

**Section 8**. The Governor's office appoints Board members. The Board reviews and conducts investigations into hundreds of complaints every year and so it is essential that certain specialty areas are represented on the Board. It is also beneficial to have a diverse group of individuals appointed to the Board with representatives from rural practice and major hospitals and from various locations throughout the state. The proposed language allows the Board to communicate with the Governor's office regarding such specialty and practice areas which will be taken into consideration when filling vacancies. Also clarifies term limits for Board members as two "full" terms.

**Section 9.** Allows the Board to communicate a "vacancy" to the Governor's office to fill appointment if a Board member is consistently absent from meetings.

**Section 10.** Clarifies that the Board "employs" an executive director and role of the executive director.

**Section 11.** Removes outdated language as the Board does not implement an examination for licensure during its meetings.

**Section 12.** Allows the Board to utilize funds for promotion and education of the professions and that the Board may adopt rules to implement the chapter.

**Section 13.** Updated language provides that an applicant has a year to submit all required documentation for licensure.

**Section 14.** Clarifies that Board members receive reimbursement for mileage, expenses, and lodging consistent with state law and that the Board may employ a staff to carry out the duties of the chapter.

**Section 15.** Several updates to physician licensure:

- Removes the "good moral character clause."
- Foreign medical graduates are currently required to complete thirty months of residency before they may apply for physician licensure. Those still in a residency program can apply for a physician licensure after thirty months – which would allow them to work outside of their residency program. However, the law allowed residents to apply for a "special license" after twenty-four months with the Board to allow such moonlighting. In reviewing licensure requirements around the nation, the majority of jurisdictions require twenty-four months of residency for

international graduates before being eligible for licensure. As such, the application for the "special license" appeared to be an unnecessary, inefficient barrier to practice as this license had to be approved by the Board at a meeting. The updated language in (3)(b) puts North Dakota in line with national standards by now requiring twenty-four months of residency, removing the "special licensure" application requirement.

- Incorporates a "uniquely qualified license." This license is detailed in rule (50-02-02-01(2)) that the Board would like specifically referenced in the law. It recognizes that there may be practicing health care workers who may not meet all technical eligibility requirements for licensure, but who are uniquely qualified through training and experience or would make a unique or special contribution to the practice of medicine that should allow them to obtain North Dakota licensure if certain standards are met.
- This takes language from 43-17-21 – repealed in Section 34 – and places directly in the physician licensure section – specifically, that an applicant may be called to interview before the Board prior to licensure and that the Board may issue provisional licenses in between Board meetings.

**Section 16.** Updates language as individuals receive a "license" and not a "registration." Also requires licensees to maintain contact information with the Board with potential fines and disciplinary action for failing to maintain.

**Section 17.** Updates language as individuals receive a "license" not a "registration."

**Section 18**. Updates language to allow transition to a two-year license. A survey was sent out to licensees asking for input on length of licensure with an overwhelming majority requesting a two- or three-year license (versus the one-year license currently in place). With moving to a two-year license, the penalty fee for late renewal is changed to "up to" three times the licensure fee. This puts a cap on the fee but also allows some flexibility for the Board to adopt a lesser fee by rule.

**Section 19.** Adds a penalty fee for failing to comply with continuing education requirements and notice of possible disciplinary action for failure to timely respond to a CME audit.

Section 3 allows an exception to reporting CME requirements if the physician has a current national certification from a specialty board. To maintain such certification, the physician already is required to submit CMEs but may be on a different cycle then the Board audit. The Board will therefore accept the certification instead of requiring redundant CME hours be submitted.

**Section 20.** A continued question received by the Board and Association is how long licensees should maintain records. In review of HIPAA requirements and other state requirements, seven years is being suggested. There is also language for transferring medical records if a licensee is no longer practicing.

**Section 21.** Updates language on disciplinary action taken for use of alcohol or drugs. Currently the law only allows discipline for "habitual use" of alcohol or drugs. However, there are times when the Board only receives information on one use, but the one use raises serious concerns. For example, the Board recently indefinitely suspended a license from an individual who operated on a patient with alcohol in his

system. No other alcohol related incidents were reported but the instance was so egregious that it should be a basis in itself for discipline action. The updated language allows the Board to take such action if the use of alcohol or drugs interferes with the practitioner's ability to safely practice. Outdated language on fluoroscopy techs is also removed as they are no longer under the jurisdiction of the Board.

**Section 22.** Updates language to all "licensees" under the jurisdiction of the Board.

**Sections 23 and 24.** Updates language to all individuals rending emergency treatment which will include physician assistants in addition to physicians.

**Section 25.** 43-17-41 requires various licensees to report certain wounds, injuries, or other traumas to law enforcement including injuries of knives, guns, or pistols, or trauma associated with domestic violence and sexual offenses. This language makes such records exempt from public disclosure.

**Section 26.** Clarifies all licensees are allowed to apply topical fluoride varnish.

**Section 27.** North Dakota is part of the Interstate Medical Licensure Compact. After licenses are issued through the Compact, and Board is authorized under the law to follow up with additional questions of the licensee including questions regarding malpractice history or other reportable offenses. This added language allows a fine and possible disciplinary action for failure to answer this questionnaire.

**Updates to North Dakota Century Code Chapter 43-17.1**

**Sections 28.** Chapter 43-17.1 outlines the process and procedures followed by the Board for discipline. The language has been updated throughout the chapter to

refer to all “licensees” under the jurisdiction of the Board, providing clarification that all licensees follow the same disciplinary process.

**Section 29.** Updated language reflects adding a physician assistant to the Board, that information shared with investigators or other experts retained to provide services/opinions remain confidential in such hands, and that it is the executive director of the Board that assigns cases to each investigatory panel.

**Section 30.** Updates reference to “licensee.”

**Section 31.** Updated language clarifies what needs to be reported to the Board by the licensee and when such reports need to be made.

**Section 32.** Updates reference to “licensee.”

**Section 33.** Clarifies what information is confidential and what is open to the public. It is only after an Investigatory Panel seeks disciplinary action that the complaint, executed stipulation, and any order becomes public.

Section 4 allows the Board to share investigatory information with another licensing authority. Individuals may be licensed in numerous states and when the licensing boards are conducting concurrent investigations, it allows for that exchange of information as long as the receiving state can verify the information would be protected in their jurisdiction.

**Section 34.** Repeals two laws:

43-17-21: This law contains outdated language regarding reciprocity and endorsements. The Board is part of the Interstate Medical Licensure Compact and therefore does not have endorsements through reciprocal agreements with other states. Other language in this section regarding interviews and provisional license issued

between board meetings was placed more appropriately in the physician licensure section 43-17-18 (Section 15).

43-17-30: This law contains outdated language for failure to pay application fees. As a license is only issued after a fee is paid, this section is unnecessary.

Thank you for your time and attention and I would be happy to answer any questions.