



NORTH DAKOTA BOARD OF CHIROPRACTIC EXAMINERS

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HB 1105

House Industry, Business, and Labor Committee

January 4, 2023 2:15 PM

Good afternoon, Chairman Louser and members of the House Industry, Business, and Labor Committee. My name is Lisa Blanchard, I am the Executive Director of the North Dakota Board of Chiropractic Examiners and am here presenting the Board's testimony for HB 1105. This is a clean-up bill. The Board's intent is to consolidate and clarify the language for the Board's disciplinary records. This bill has no fiscal impact.

As you will note in the bill, there is one subsection and two independent sentences in chapter 43-06 involving public records regarding complaints and discipline. The Board is proposing to remove these from their current locations and consolidate them into a new section 43-06-15.1 – Disciplinary Records.

Section 1 of the bill removes subsection 7 from 43-06-14.1. This describes that all data and information, including patient records acquired by the board or a peer review committee, in the exercise of its duties and functions, are confidential and closed to the public.

Section 2 of the bill removes two sentences included in 43-06-15. The first to be removed is the final sentence in subsection 2, found on page 3 of the bill. This sentence states that the reports are not public records. Reports, as defined in that subsection, are signed written statements and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations. The second sentence to be removed can be found under subsection 6, found on page 4. This concerns medical or psychological information of a licensee.

All three of these portions of Century Code have been subject to challenges through the open records and meetings complaints process. The Attorney General's opinions have affirmed the Board's action and interpretations for the sentences in Section 2 of the bill. The opinion for Section 1 is currently pending. Additionally, the Board was a party to litigation regarding the open records and meetings law and found

in violation of the law. However, that litigation was not based upon any of the items in this bill. The litigation concerned North Dakota Century Code Chapter 44-04, specifically Attorney Consultation.

Section 3 of the bill is the new section, 43-06-15.1, with the consolidated language concerning the disciplinary records of the Board. We reviewed equivalent laws of other North Dakota regulatory boards regarding their disciplinary records. Our proposal in this bill is not unique, it mirrors the language of the North Dakota Board of Medicine. The Board selected this process to mirror because similar to the Board of Medicine, the majority of complaints before the Board of Chiropractic Examiners deals with patient records and billing records, both of which are protected under HIPAA. Based upon the number of open records and meetings complaints filed regarding these provisions, the Board felt it necessary to clarify the law, for both the Board and the public's benefit.

The disciplinary process can be complicated, and the information received varies with each complaint. Items currently protected, such as patient records, billing records, and the complaints, will remain protected. We believe that many complaints would not be filed if this were to change. The Board's duty is to protect the public. If they do not receive the information that a licensee may be in violation of the law or harming the public, they cannot perform their duties. When a complaint results in dismissal, for no violation of law or that the evidence does not support disciplinary action, the licensee's reputation is protected. When a violation of law occurs, resulting in a disciplinary action, that information has been and will remain public, as indicated by the proposed language in section 3.

This bill simply combines and creates one section for the disciplinary records of the Board. The existing verbiage does change, but the current, closed public record status, that already exists in the law, is maintained.

I would like to thank you for your time. This concludes my testimony and I would stand for any questions.

If the committee members have any additional questions or would like any additional information from the Board, please contact our Executive Director:

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