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- Licensed Chiropractor in ND (and previously NC)
- Owner of Freedom Chiropractic Health Center in Fargo
- Founder and president of the Association of Wellness Chiropractors
- Business co-owner of several entities in ND involving land, minerals, water, and real estate
- Associates degree at Williston State College, BS in Chemistry at Dickinson State University, Doctor of Chiropractic at Northwestern Health Sciences University, Master's degree in Human Nutrition and Functional Medicine at University of Western States, and finishing Doctorate in Clinical Nutrition at University of Western States
- Married with 4 children

Chairman Klemin, Representatives of the House Judiciary Committee,

Hello and thank you for the opportunity to speak to you today. My name is Dr. Jake Schmitz, and I am here today representing myself as a licensed chiropractor in the state of North Dakota (ND). I have been a practicing chiropractor in Fargo for just over 11 years.

I support the proposed HB 1154. The reasoning behind this bill is twofold. First, this bill prevents administrative agencies from moving for summary judgment in administrative cases without license holders' written approval that there are no material facts in dispute. Second, this bill balances the unequal power distribution agencies receive when they act in their quasi-judicial capacity. Currently in ND, licensees have less rights to defend themselves than criminals do. That is why I am here today.

I will cover each of these issues and why this bill is vital for due process and fairness within the confines of NDCC 28-32. The unfortunate reality of administrative cases is the deference argument agencies use with administrative law judges. If the "experts" on the board dictate there are no facts in dispute, that is typically the end of it. As it stands currently, administrative law judges grant deference to agencies, regardless of whether the license holder disagrees about the facts.

In the administrative hearing process, administrative agencies have a disproportionate amount of power over the license holder in question. The mission statement of the Office of Administrative Hearings is *"To resolve administrative disputes through **holding fair and impartial hearings*** [emphasis added] *and issuing reasoned and timely decisions."* The mission is being subverted by state agencies through the motion for summary judgment.

This has impacted me personally (financially, emotionally, professionally). In my case, I argued the facts were in dispute, and the administrative law judge disregarded my arguments and instead ruled in favor of the board, granting summary judgment. I had a weeklong hearing scheduled, but when the administrative law judge granted summary judgment, my hearing was canceled. I was not given a hearing, and 2 years later the Supreme Court ruled this was inappropriate (the ruling was reversed and remanded).

Below is the highlight of Schmitz v. State Board of Chiropractic Examiners 2022 ND 113 from the Supreme Court website:

"A formal, evidentiary hearing is required whenever an administrative agency acts in a quasi-judicial capacity unless the parties either agree otherwise or there is no dispute of a material fact. A summary judgment is inappropriate if a fact-finder must draw inferences and make findings on disputed facts to support its decision. Even when facts are undisputed, a summary judgment may not be granted if reasonable differences of opinion exist as to the inferences to be drawn from those facts."

I want to explain the difference very briefly between administrative civil proceedings and ordinary civil proceedings, because they are, in fact, different; especially where summary judgment is concerned. District Court judges have more leeway in examining whether facts are genuinely in dispute. Administrative law judges cannot do that, as referenced by the Supreme Court. The moment an administrative law judge draws inferences from the facts, summary judgment is no longer applicable. HB 1154 prevents administrative law judges from having to decide this issue. There will no longer be any dispute about disputed facts because both parties will have to agree, one way or the other.

This bill is very simple. It requires a hearing for all licensing complaints, unless both parties agree in writing to forgo a hearing. This is vital for due process to remain intact. In my own case, the Supreme Court ruled that a hearing is required for licensing issues.

HB 1154 fixes the problem the Supreme Court found. This also prevents another license holder from having to go through what I went through. I spent over $125,000.00 in pursuit of an opportunity for a hearing (due process). This bill would keep that from ever happening to another licensee.

Proposed Amendment:

The following is a proposal to make this bill even more robust. Line 10, "subject to agency approval" should instead say "subject to approval of the parties". In the spirit of the bill, this change gives both parties equal footing in the administrative hearing process.

Please vote a DO PASS for HB 1154. The right of license holders to defend their livelihood, their businesses, and their reputations depends on it.

Thank you for your time. I greatly appreciate the opportunity to testify in front of you today. I will welcome any questions you may have.

Maximum blessings,

Dr. Jake Schmitz