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March 4, 2023

Senator Larsen and Industry and Business Committee,

I am asking you to give a "Do Pass" to HB 1517. I am a licensed Doctor of Chiropractic and have practiced in Bismarck-Mandan for almost 12 years now. HB 1517 deserves a bit of history. As I understand, State boards, including chiropractic boards, are to adhere to the rule of law (e.g. century code). The laws are not here to adhere to the actions of the board.

This bill is in front of you, quite simply, because this very board was requesting to change the law to fit how they currently operate (a prior bill, HB1105). They were caught by the highest court in our state, the ND Supreme Court, to be operating outside the law. The only way this was able to be proven was for the license holder to receive judgement from the board, then to appeal to district court, and next to the ND Supreme court.

If you are already familiar with this situation, (Dr. Jake Schmitz testimony) feel free to skip to the section; "My Personal Experience" below.

The board had acted illegally by whenever discussing a board complaint, would go to closed-door executive session. They used "Attorney consultation" as their reasoning for this, and they refused an official open records request for the "defendant" to know what was being said about his case. This appears to be standard for their procedures, even though not legal.

It turns out that this very board had a good reason to hide what they were saying. In listening to some of the meetings, the meetings were riddled with aggression towards this license holder, with the seeming intent to use him as an example and what clearly sounds to me like they wanted to target him and hurt him as much as possible.

The board meetings did get out. Only through this individual fighting to save his own license through district court all the way to the ND Supreme Court. I will take directly from the court ruling:

> "…Accordingly, after an in-camera review, to the extent the district court determines on remand that the recordings of the executive sessions, or discussion therein, went beyond the scope of attorney consultation or attorney work product, we direct the court to require disclosure of the recordings or discussion to only those matters not exempt under the law...
> https://law.justia.com/cases/north-dakota/supreme-court/2021/20200310.html

The testimony promoting 1105 made it clear the state board was trying to hide this fact in the wording of the bill avoided the true intent of their bill. They were evasive when this concern was questioned and deferred to "HIPPA" and other misdirection. Therefore, upon voting down hb 1105, HB 1517 came about to correct the wrongs of the board.

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My personal experience.

I have had my own experience with the board discussing a frivolous complaint against my own licensure. The board did not pursue the complaint, but they did discuss the ENTIRE CASE under executive meetings. Sometime during that meeting one of the board members recused himself from the discussion/ruling. I have no idea why as no explanation was ever given under their veil of secrecy, or "attorney consultation". I just know he was in the meeting and for some reason I'm assuming there was some conflict of interest. Yet he was still in the meeting, and I, the person "on trial", was not allowed into the meeting. But someone with a conflict of interest was? I had formally requested the executive session recording but was told the entire meeting was client/lawyer consultation and so to this day I don't know what happened in that meeting. None of my case was discussed with me. When I asked why, I was simply told I wasn't allowed an explanation due to attorney consultation.

Remember, the board members in our profession are colleagues, but also competitors in the chiropractic marketplace with the very people they are making judgements upon. They may not like another practitioner, feel threatened by losing some of their "marketshare", or be worried about evolving skillsets of their colleagues. They may just want to hurt or get rid of that doctor. We can hope that is not the case however all are prone to bias to some degree.

Even as I write this, I can't help but worry that my own board will see this as an act of aggression towards them and put me "on their radar." It is not. There's no malice here. Just concern for current and future license holders. This letter shouldn't have to instill fear. This very board was ruled by the supreme court (the highest court) to have acted outside the law. A license holder SHOULD have the right and ability to:

1. Be present for the discussion of our License/future/Career, and record it for potential litigation reasons, and therefore protect it. (e.g. the individual on "trial" to be present for their "trial").

2. Identify and correct material facts, defend ourselves against mistruths, illegal actions, and discrimination (which we may not even know is happening if can't access the discussions).

3. Hold the board accountable for their actions. If they have nothing to hide, they shouldn't feel the need for secrecy of their meetings.

This bill benefits patients, license holders, and our profession. It benefits the spirit of transparency, communication, and truth. It prevents the board from avoiding public scrutiny for their own actions while acting as judge, jury, and executioner without representation by the license holder. Please, feel free to reach out with any questions.

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