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Chairman Larson, Senators of the Judicial Committee,

My name is Dr. Jake Schmitz, and I am testifying on behalf of myself as a licensed chiropractor in the state of North Dakota (ND). I have been a practicing chiropractor in Fargo for about 11 years. My testimony is in support of SB 2296.

SB 2296 serves an extremely important function for ND as it pertains to administrative proceedings. As it currently stands, administrative agencies are granted deference by administrative law judges (ALJ) during adjudicative proceedings. State boards/agencies regularly ask for deference when interpreting statutes or regulations. Boards shouldn't be granted deference for any part of the proceeding, as there are in many cases, disputes to both facts and law in question before the ALJ. SB 2296 requires ALJs to cast doubt in favor of a reasonable interpretation, limiting the power of the agency. The definition of reasonable from Black's Law is, "*fair, proper, or moderate under the circumstances."* This equates to fairness and has a higher likelihood of leading to more settlements out of court. This should save money for all parties, since the agency in question has an increased reason for wanting to settle out of court, because they will no longer be getting an advantage through the administrative proceeding. As is the case with most agencies, if they do win, they get reimbursed for the costs of proceeding. This means there should be minimal to no increased cost to the state. In fact, occupational boards are funded with license holder dues, and not state money.

The unfortunate reality in ND is criminals are given more rights to defend themselves than license holders. In the criminal system, a person is innocent until proven guilty beyond a shadow of doubt. The burden is on the prosecutor to prove guilt. Licensees in ND are guilty unless they can prove themselves innocent. This disparity is largely due to boards getting granted deference. Deference is fine when dealing with highly technical matters within the agency's purview. It is being overutilized and abused, as anything and everything in an agency's statute/regulations falls under "deference". This is quite the hurdle to overcome, and I know this from my own personal case against my state board.

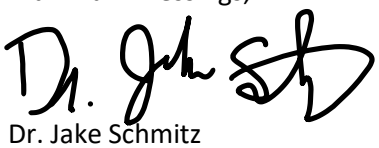
My understanding is this bill does not remove an agency's ability to levy a punishment if the ALJ agrees with their position. The agency is still the final decision-maker for punishments, unless they specifically ask for the ALJ to make the determination. The word "disposition" simply refers to the ALJ determining which party is right in the lawsuit.

If the ALJ agrees with the licensee, the board/agency can appeal to District Court. The appeals process isn't an additional burden, but an evening of the playing field. On one hand, agencies make the claim that a licensee can simply appeal decisions they don't agree with. On the other hand, they assert it is onerous when they must do the same.

The most important question to consider with this bill is why a state agency wouldn't want a truly neutral party (judge) to listen to the facts presented, make recommendations, and to decide the case, as they are trained to do? What are they afraid to lose with this bill? If they make a compelling case, the judge will side with them. They shouldn't be given an advantage no matter the circumstances.

Please vote DO PASS on SB 2296. Thank you for your time and I will answer any questions you might have for me.

Maximum Blessings,



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