

1999 HOUSE EDUCATION

HB 1138

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1138

House Education Committee

Conference Committee

Hearing Date January 6, 1999

Tape Number	Side A	Side B	Meter #
one	x		45.8 - 53.7
Committee Clerk Signature <i>Sairy Wagner gud</i>			

Minutes:

PAT SEAWORTH, University System: See written testimony attached to the minutes.

REP. MUELLER: What instances are we looking at where the intent of this bill is being violated is a problem.

SEAWORTH: The only instance has been in the context of litigation when a patient or former patient has been a party to a law suit and the other side has demanded all patient records. In all those cases the other side was entitled to those records through the discovery process so it did not end up in a situation where we denied records and had to seek a court ruling. The issue was resolved under the rules of evidence. However because of those cases where those situations came up the medical providers became concerned and wondered what would happen if someone would demand access to patients records. Right now there is no state law that would allow us to deny that request. We would deny request but in absence of state law we might end up in court .

Page 2

House Education Committee

Bill/Resolution Number hb 1138

Hearing Date January 6, 1999

JACK MCDONALD, Appearing in behalf of the North Dakota Broadcasters and Newspaper

Association: Testified in support of this bill. See written testimony attached to these minutes.

NO FURTHER TESTIMONY FOR OR AGAINST HB 1138.

COMMITTEE ACTION 1-11-99 HB 1138

CHAIRMAN KELSCH: What are the wishes of the committee. MOVED for DO PASS by Rep

Haas and SECONDED by Rep Nottestad. disucussion -- being none -- clerk call the roll on a

DO Pass on HB 1138 (roll call vote attached) passed with 15 YEs and 0 No and 0 Absent.

Floor assignment Rep Haas.

Date: 1-11-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1138

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Haas Seconded By Nottestad

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovdal-Vice Chair	✓				
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard	✓				
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				
Rep. Howard Grumbo	✓				
Rep. Lyle Hanson	✓				
Rep. Deb Lundgren	✓				
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki	✓				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Haas

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 11, 1999 4:07 p.m.

Module No: HR-05-0483
Carrier: Haas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1138: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1138 was placed on the
Eleventh order on the calendar.

**1999 SENATE EDUCATION
HB 1138**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1138

Senate Education Committee

Conference Committee

Hearing Date March 3, 1999

Tape Number	Side A	Side B	Meter #
1	x		4228--end
Committee Clerk Signature <i>Jinola Christman</i>			

Minutes:

SENATOR FREBORG opened the hearing on HB1138. All senators were present.

Testimony in Favor: Pat Seaworth, General Counsel for North Dakota University System.

Written testimony attached. The reason this bill is proposed is because they were redoing the statutes concerning confidentiality of patient records. Concerned that based on the state's open record law which you know provides that all records in possession of public officials are open unless there is a specific statute that says otherwise. Someone could argue that patient records are open records. There is no such statute and in the absence of such a statute it is not clearly stated that patient records are confidential. This bill would clear up any questions.

SENATOR COOK : HB1186 is a cleanup bill and I see we are adding medical records there under confidentiality, does that not solve the problem.

Pat: What HB1186 states in that regard is that it says it authorizes the board of higher education to adopt rules to protect the confidentiality of medical records. So that would be consistent in fact would supplement 1138. It says that those records are confidential , 1186 says that the board my adopt rules to protect that confidentiality.

SENATOR COOK : Give me the rational as to why if I have a 19 year going to UND that their medical records should be confidential from me.

Pat: This bill would not affect that issue. This bill simply says that the records are confidential, meaning that they are not subject to the state's open record law. Now who has access to those confidential records is determined by the rules established by that particular clinic. General rule, legally parents are entitled to have access to medical records of dependent children. This legislation does not impact that. The 19 year old is considered an adult and generally a parent would not generally speaking be entitled access to records of their adult child.

SENATOR COOK : If I have a son or daughter going to UND or NDSU, I'm paying medical insurance and they are covered underneath my medical insurance. Then when they go to college I pay \$67 dollars a semester at UND for the medical service that is available to them at the clinic. The difference is if they go to the hospital for strep throat it is going to be covered by my insurance. If they go to the clinic and get treated, it is not covered by my insurance and the records are confidential. Is that not the situation we have created here.

Pat: That may very well be the situation.

SENATOR COOK : Do you not think that parents that are paying for health insurance and paying for college should have some options available for whichever they could opt out of the fee for the health care that is offered at the college.

Pat: The board of higher education does not mandate student health services. That determination is made at each institution. It is the students who have decided to by majority vote assess themselves a student fee to support student health services. There are not general funds used to support student health service. They are entirely self supported. The students by majority vote could offer an opt out.

SENATOR WANZEK : Could there possibly be situations where because of a unique medical condition or situation, the diagnosis and the treatment, couldn't there be a situation where that information is beneficial for research and study. Would we be prohibiting access to that.

Pat: This legislation simply says these records are not subject to the state's open record statute.

SENATOR KELSH : Why doesn't the university systems allow in those cases where they use the university health system to access the insurance.

Pat: The student health services are set up for the convenience of the student and they are not designed to be a full fledged health clinic. Basically just a convenience clinic. Most of services provided are generally not covered under your regular insurance. It is health maintenance.

SENATOR FLAKOLL : How would this be different from confidentiality records in the real world.

Pat: It wouldn't. This bill simply says those records at the clinic are not subject to open record law.

Testimony in Favor: Jack McDonald, North Dakota Newspaper Association and the North Dakota Broadcasters Association. Written testimony attached. Good bill.

Closed hearing on HB1138.

SENATOR WANZEK : I move a DO PASS on HB1138.

Page 4
Senate Education Committee
Bill/Resolution Number HB1138
Hearing Date March 3, 1999

SENATOR KELSH : 2nd

SENATOR FREBORG : Motion has been made and seconded for a DO PASS on HB1138.

Vote: 5 Yes 1 No 1 Absent

CARRIER: SENATOR FLAKOLL

REPORT OF STANDING COMMITTEE (410)
March 4, 1999 8:17 a.m.

Module No: SR-39-3987
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1138: Education Committee (Sen. Freborg, Chairman) recommends DO PASS
(5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1138 was placed on the
Fourteenth order on the calendar.

1999 TESTIMONY

HB 1138



NORTH DAKOTA UNIVERSITY SYSTEM

Testimony of Pat Seaworth, General Counsel
North Dakota University System
Concerning HB 1138

House Education Committee
January 6, 1999

Madam Chair and members of the House Education Committee:

HB 1138 provides that all patient records at a state college or university student health service, university of North Dakota medical center or family practice center, or other university system medical facility are confidential. As you know, the general rule is that all records of a public entity in this state are open to the public. Certain categories of medical records (for example, drug or alcohol treatment records) are confidential pursuant to specific federal or state statutes. Further, subsection 2 of NDCC § 15-10-17 states that the board of higher education may provide that patient records at the medical center rehabilitation hospital at the university of North Dakota (which is no longer operated by UND) are confidential. However, there is no statute providing that patient records at all university system medical facilities are confidential, and there is no comprehensive state law that makes all medical records at all medical facilities confidential.

Physicians and other medical professionals are bound by professional and ethical obligations requiring them to keep patient records confidential. However, these standards do not necessarily supercede state law. The open records law, and court decisions interpreting that law, are quite clear: except as otherwise specifically provided by law, all records of a public entity are open to the public.

Absent a specific statute addressing this issue, it is not clear that all patient records at university system medical clinics are confidential and exempt from the open records law. HB 1138 is intended to clear up any such uncertainty. The board of higher education requests your favorable consideration of HB 1138.

State Capitol - 600 East Boulevard, Bismarck, North Dakota 58505-0230 - (701) 328-2960
Fax 701.328.2961 - Internet NDUS_office@prairie.nodak.edu

The North Dakota University System is governed by the State Board of Higher Education and consists of: Bismarck State College - Dickinson State University - Mayville State University - Minot State University, Minot and Bottineau Campus - North Dakota State College of Science - North Dakota State University, Fargo - University of North Dakota, Grand Forks, Lake Region and Williston - Valley City State University

January 6, 1999

HOUSE EDUCATION COMMITTEE

HB 1138

CHAIRMAN KELSCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of The North Dakota Newspaper Association and The North Dakota Broadcasters Association. We support **HB 1138** and urge that you give this a DO PASS.

We have always considered such information confidential and believe this bill properly extends the confidentiality already available under §15-10-17(2) [below] to such records at all of North Dakota's colleges and universities.

If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

WEST'S NORTH DAKOTA CODE
TITLE 15. EDUCATION
CHAPTER 15-10. THE STATE BOARD OF HIGHER EDUCATION

Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)

§ 15-10-17. Specific powers and duties of board of higher education

The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter, including:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons or the public.
2. To have supervision and control of the grounds, buildings, and all other property of such institutions, and to authorize such institutions to maintain confidential records containing personal information regarding their prospective, current, or former students or regarding patients at the medical center rehabilitation hospital at the university of North Dakota, with the information in such records subject to release by the institution only upon a court order or the express or implied consent of the student or patient involved. A prospective, current, or former student shall be deemed to have consented to the release of all records to a prospective employer upon application for employment to that employer, provided the position is of such a nature as to require security clearance. The board may procure all necessary apparatus, instruments, and appurtenances for instruction in said schools within the limits of legislative appropriations therefor.



NORTH DAKOTA UNIVERSITY SYSTEM

Testimony of Pat Seaworth, General Counsel
North Dakota University System
HB 1138

Senate Education Committee
March 3, 1999

Chairman Freborg and members of the Senate Education Committee:

HB 1138 provides that all patient records at a state college or university student health service, University of North Dakota medical center or family practice center, or other university system medical facility are confidential. The general rule is that all records of a public entity in this state are open to the public. Currently, certain categories of medical records (e.g., drug or alcohol treatment records) are confidential pursuant to federal or state law. Also, subsection 2 of NDCC section 15-10-17 states that the board of higher education may provide that patient records at the medical center rehabilitation hospital (which is now leased to, and will, pursuant to other legislation, be sold to Altru Hospital) are confidential. However, there is no statute providing that patient records at all university system medical facilities are confidential.

Physicians and other medical professionals are bound by professional and ethical standards requiring them to keep patient records confidential. However, these standards do not necessarily supercede state law. The open records law and court decisions interpreting the law state that all records of a public entity are open to the public, except as otherwise specifically provided by law.

Absent a specific statute, it is not clear that patient records at university system medical clinics are exempt from the open records law. HB 1138 is intended to clear up this uncertainty. The board of higher education requests favorable consideration of HB 1138.

State Capitol - 600 East Boulevard, Bismarck, North Dakota 58505-0230 - (701) 328-2960
Fax 701.328.2961 - Internet NDUS_office@prairie.nodak.edu

The North Dakota University System is governed by the State Board of Higher Education and consists of: Bismarck State College - Dickinson State University - Mayville State University - Minot State University, Minot and Bottineau Campus - North Dakota State College of Science - North Dakota State University, Fargo - University of North Dakota, Grand Forks, Lake Region and Williston - Valley City State University

March 3, 1999

SENATE EDUCATION COMMITTEE
HB 1138

CHAIRMAN FREBORG AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of The North Dakota Newspaper Association and The North Dakota Broadcasters Association. We support **HB 1138** and urge that you give this a DO PASS.

We have always considered such information confidential and believe this bill properly extends the confidentiality already available under §15-10-17(2) [below] to such records at all of North Dakota's colleges and universities.

If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

ND CODE § 15-10-17, Specific powers and duties of board of higher education

Page 1

*5371 N.D. Code § 15-10-17

WEST'S NORTH DAKOTA CODE
TITLE 15. EDUCATION
CHAPTER 15-10. THE STATE BOARD OF HIGHER EDUCATION

Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)

§ 15-10-17. Specific powers and duties of board of higher education

The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter, including:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons or the public.
2. To have supervision and control of the grounds, buildings, and all other property of such institutions, and to authorize such institutions to maintain confidential records containing personal information regarding their prospective, current, or former students or regarding patients at the medical center rehabilitation hospital at the university of North Dakota, with the information in such records subject to release by the institution only upon a court order or the express or implied consent of the student or patient involved. A prospective, current, or former student shall be deemed to have consented to the release of all records to a prospective employer upon application for employment to that employer, provided the position is of such a nature as to require security clearance. The board may procure all necessary apparatus, instruments, and appurtenances for instruction in said schools within the limits of legislative