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ROLL NUMBER

DESCRIPTION

1377

2001 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1377

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1377 A

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/09/01

Tape Number	Side A	Side B	Meter #
1	X		0-END
		X	0-1117
Committee Clerk Signature <i>Robin G. Small</i>			

Minutes:

REP. M. KLEIN called the hearing to order, with all committee members present.

In favor:

REP. GEORGE J. KEISER, DISTRICT 47

REP. KEISER introduces the bill to the committee, and urges a do pass. REP. KEISER also states to the committee that many people have filed suits on matters concerning the podiatric association.

REP. KASPER asks how the boards are determined. REP. KEISER states that he will let someone else answer that question. REP. DELVIN asks if this piece of legislation is passed, then who would deal with the debt, if the board would go belly up? REP. KEISER replies that he is really not quite sure about that. Maybe end up picking it up or do nothing. The board does need to be protected though. REP. HUNSKOR asks what is the amount of funding that the board will need. REP. KEISER defers the question.

In favor:

GARY THUNE, SPECIAL ASSISTANT ATTORNEY, BOARD OF PODIATRIC MEDICINE

Talks about formal complaints that have been made. The case is now at the hands of the Supreme Court. THUNE touches base on the \$32,000.00 that is owed. Licensor and discipline.

The board is now in court with BRIAN GALE. Many financial problems. THUNE refers to the court cases as GALE 1 and GALE 2.

REP. KLEMIN asks how much money will you need? THUNE replies that realistically they will need at least \$50,000.00. REP. KASPER asks how the board and the members of it are made up? THUNE replies that the Governor's office appoints it. REP. KAPSER asks who would pay back the loan if they could not. THUNE replies that the state of North Dakota would. REP. MEIER

asks how many people have filed complaints? THUNE replies that there have been 25 complaints over the past six years. REP. CLEARY asks how many of the complaints came from DR. OLSON. THUNE replies that they came from DR. OLSON'S patients, that use to see BRIAN GALE. REP. CLEARY asks what would prevent the board to go to a bank for a loan? THUNE replies that no state agency has authority to do so, unless the statute allows it.

REP. KROEBER asks if any of these cases have reached the Supreme Court? THUNE refers to GALE 1. REP. KROEBER asks about BRIAN GALE'S license to practice. THUNE states that GALE was placed on probation, at the second set of cases the license was then revoked. Later on the right to do surgical procedures was then revoked. REP. DEVLIN asks how many podiatrists there are. THUNE replies that there are between 21 to 16 practicing in the state. REP. DEVLIN asks what type of money has the board spent on legalities. THUNE replies that it has been over \$5,000.00 to \$7,000.00 each year since 1995. It is thought to be believed that GALE has spent over \$500,000.00.

REP. KLEMIN asks if there is a limit to types of surgeries that a podiatrist can do. THUNE replies that a podiatrist is strictly limited to the foot and ankle.

In favor:

DR. AARON OLSON, PRESIDENT - BOARD OF PODIATRIC MEDICINE

Please see attached testimony.

OLSON states to the committee that there are 18 other doctors that support this. OLSON comments that he has 9 letters of support with him today. There are 21 licensed podiatrists in the state.

REP. KROEBER asks if there is one lay person on the board. OLSON replies that there is.

REP. KROEBER asks if his term is up in one year. OLSON replies that it is up in June of this year, then the position will be filled by the decision of the board. REP. KASPER asks why the complaints come to the board first? OLSON replies that he doesn't have an exact answer for that, a lot of people don't know where they are.

GARY THUNE then addresses the committee with some of the complaints that have been made.

Oppose:

DR. FRANSICAN TELLO, PODIATRIST, SELF

Please see attached testimony.

Points out to the committee that only one of the complaints went to a malpractice suit. This whole thing is a bunch of muck!

REP. BELLEW asks if they are labeled as medical doctors. TELLO states that they are not.

REP. METCALF asks if they win by default. TELLO replies that it is assisting by accessing.

REP. KLEMIN asks about the board of examiners. TELLO replies that he is looking for a legal

opinion. REP. BRUSEGAARD asks what are the dues of the podiatric association. TELLO

replies that they are \$500.00 for state, and \$1000.00 nationally.

Oppose:

BRIAN GALE, SELF

Please see attached testimony. States that there are outrageous scare tactics going on here.

REP. METCALF asks about not having a doctor on the board. GALE replies that the need for

one has been lost. REP. KROEBER asks about being appointed from their organization. GALE

states that he does not understand the question. REP. KLEMIN asks how should the expenses be

paid for. GALE replies that a grave injustice has been done. The board will eventually go away if

you take the doctor out of the board. REP. KLEMIN asks why he is opposing the bill. GALE

replies that the tax payers will not pay for this, nor would they want to. This litigation could be

endless with DR. OLSON ahead of it. REP. HAAS asks how the thing between GALE and

OLSON ever came to be. GALE replies that they were partners at one time. OLSON had extreme

overhead in his practice. The partnership then dissolved and the split was very ugly.

Being there was no further testimony in favor or opposing the hearing was then closed. Action

was not taken at this time.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1377 B

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/15/01

Tape Number	Side A	Side B	Meter #
1	X		0-872
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes:

COMMITTEE WORK:

REP. M. KLEIN called the committee to order. HB 1377 was heard on Feb. 9th, 2001.

ACTION:

All members were present.

REP. BRUSEGAARD motioned for a DO NOT PASS, seconded by REP. GRANDE. The roll call vote was taken with 12 YES, 3 NO and 0 ABSENT AND NOT VOTING. The motion carries. The CARRIER of the bill is REP. BRUSEGAARD.

HB 1377: DO NOT PASS 12-3

CARRIER: REP. BRUSEGAARD

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1377 C

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/20/01

Tape Number	Side A	Side B	Meter #
1	X		0-1134
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes:

REP. M. KLEIN called the committee to order with all members present, except REP. CLARK and REP. KASPER.

ACTION:

REP. BRUSEGAARD motioned to reconsider the bill, seconded by REP. DEVLIN. A voice vote was taken with the majority passing it.

REP. KEISER addresses the committee, stating why this bill needs to be looked at again.

SANDY TABOR, DEPUTY TO THE ATTORNEY GENERAL

TABOR addresses the committee to answer any questions. TABOR states that the board can not run on deficit budgets. Commenting about the board using GARY THUNE'S services

General discussion.

REP. KLEMIN motions to accept the amendments, seconded by REP. BRUSEGAARD. A voice vote was taken with the majority passing it. REP. KLEMIN then motions for a DO PASS AS AMENDED, seconded by REP. WIKENHEISER. The roll call vote was taken with 7 YES,

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1377 C

Hearing Date 2/20/01

6 NO and 2 ABSENT AND NOT VOTING. The motion carries. The CARRIER of the bill is

REP. KROEBER.

HB 1377: DO PASS AS AMENDED 7-6

CARRIER: REP. KROEBER

Date: Feb. 15th, 2001

Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1377

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Brusegaard Seconded By Grande

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP KROEBER		✓
VICE CHAIR GRANDE	✓				
REP BELLEW	✓				
REP BRUSEGAARD	✓				
REP CLARK	✓				
REP DEVLIN	✓				
REP HAAS	✓				
REP KASPER	✓				
REP KLEMIN		✓			
REP MEIER	✓				
REP WIKENHEISER	✓				
REP CLEARY	✓				
REP HUNSKOR	✓				
REP METCALF		✓			

Total (Yes) 12 No 3

Absent _____

Floor Assignment Rep. Brusegaard

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

REPORT OF STANDING COMMITTEE (410)
February 15, 2001 11:22 a.m.

Module No: HR-28-3480
Carrier: Brusegaard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1377: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO NOT PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
HB 1377 was placed on the Eleventh order on the calendar.

Date: Feb. 20, 2001

Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1377

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider HB 1377

Motion Made By Brusegaard Seconded By Devlin

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN			REP KROEBER		
VICE CHAIR GRANDE					
REP BELLEW					
REP BRUSEGAARD					
REP CLARK					
REP DEVLIN					
REP HAAS					
REP KASPER					
REP KLEMIN					
REP MEIER					
REP WIKENHEISER					
REP CLEARY					
REP HUNSKOR					
REP METCALF					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VR
2/20/01

HOUSE AMENDMENTS TO HB 1377 HOUSE GVA 2/20/01
Page 1, line 7, after "Dakota" insert "or other sources"

Page 1, line 10, replace ", subject to the following conditions:" with a period

Page 1, remove lines 11 through 15

Page 1, line 16, remove "4." and replace "establshes" with "may establish"

Page 1, line 18, replace "is" with "must be"

Page 1, remove lines 19 through 21

Page 1, line 22, remove "7." and replace "reverts back" to "must revert"

Renumber accordingly

Date: Feb. 20, 2001

Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1377

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments as amended

Motion Made By Klein Seconded By Brusegaard

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN			REP KROEBER		
VICE CHAIR GRANDE					
REP BELLEW					
REP BRUSEGAARD					
REP CLARK					
REP DEVLIN					
REP HAAS					
REP KASPER					
REP KLEMIN					
REP MEIER					
REP WIKENHEISER					
REP CLEARY					
REP HUNSKOR					
REP METCALF					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: Feb. 20, 2001

Roll Call Vote #: 3

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1377

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Klemin Seconded By Wikenheiser

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP KROEBER	✓	
VICE CHAIR GRANDE	✓				
REP BELLEW	✓				
REP BRUSEGAARD		✓			
REP CLARK					
REP DEVLIN		✓			
REP HAAS		✓			
REP KASPER					
REP KLEMIN	✓				
REP MEIER		✓			
REP WIKENHEISER	✓	✓			
REP CLEARY		✓			
REP HUNSKOR		✓			
REP METCALF	✓				

Total (Yes) 7 No 4

Absent _____

Floor Assignment Rep. Kroeber

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

REPORT OF STANDING COMMITTEE

HB 1377: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (7 YEAS, 6 NAYS, 2 ABSENT AND NOT VOTING). HB 1377 was placed
on the Sixth order on the calendar.

Page 1, line 7, after "Dakota" insert "or other sources"

Page 1, line 10, replace ", subject to the following conditions:" with a period

Page 1, remove lines 11 through 15

Page 1, line 16, remove "4." and replace "establishes" with "may establish"

Page 1, line 18, replace "is" with "must be"

Page 1, remove lines 19 through 21

Page 1, line 22, remove "7." and replace "reverts back" to "must revert"

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1377

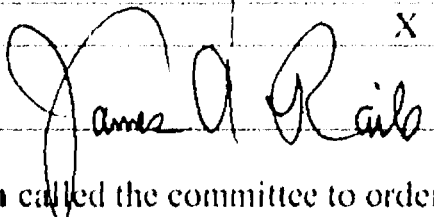
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1377

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date March 15, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-End
1		X	0.0-23.3
March 15, 2001 2		X	17.5-31.9
March 22, 2001 2	X		34.3-End
March 22, 2001 2		X	0.0-25.8
Committee Clerk Signature 			

Minutes: **Chairman Krebsbach** called the committee to order. The clerk called the roll.

Chairman Krebsbach opened the hearing on HB 1377 which relates to the authority of the board of podiatric medicine to borrow funds from the Bank of North Dakota; and to declare an emergency. Appearing before the committee to introduce the proposed legislation was **Representative George Keiser**, District 47, prime sponsor of the bill. The bill would very simply grant authority to the podiatry board to borrow money for the purpose of paying debt which it has incurred and which it is anticipating to incur in the future. The state through the legislative process, has established various boards. The purpose of those boards is to serve as an extension of the states authority to license and to review practices associated with licensing. Any complaints which might be filed can be filed there. That is to be distinguished from what might happen through the court system. Boards for example can not determine monetary awards to someone. If there is damage done to somebody, or if there were some civil complaint, whether it

is the plumbing board or the podiatry board or the medical board, they can not make a determination about civil liability. That must be processed and managed through the court system. A jury or a judge will make the determination and grant an award. The boards sole purpose is to license and then monitor the licensing process for its members. That creates an interesting scenario especially with the states loss of sovereign immunity. We as a state establish statutorily boards. We give them the authority to license the various entities within their domain and then to monitor those. When appropriate the board can suspend or revoke licenses. They must by statute respond to complaints that are filed. They must make a determination if those complaints are legitimate or whether they are frivolous. Once the complaint has been filed the board has no opportunity to just ignore it. They must take some kind of action. In the case of all boards, when complaints are made and have been reviewed, if a problem is discovered then appropriate action based on a board decision which we have granted, extended the authority to the board to make, must be made by that board. They too do not have an option to make that. He indicated he raised the issue of sovereign immunity because if the board does not act appropriately in protecting the public, that could potentially create liability for the state of North Dakota. All of our boards get money. The legislature by statute sets what their fees will be for licensing and relicensing, and so on. A portion of those fees goes into a fund for purposes like any complaints that might be filed, how the board would hear it, how it would process it, and how it would pay for that thing. The board has the ability to use the state's attorney general for legal counsel, but, due to the limitation of the capacity of our attorney general's department, they have, that department has on occasion approved the hiring of assistant attorney general's. These are lawyers in private practice. The podiatry board has in all cases been operating within that domain. They had complaints filed before them relative to a physician. They had to respond to

those complaints and they did respond to those complaints. They then made a ruling and the ruling was objected to by the party involved. It then went through the legal process. Whether or not the license had a right to be either revoked or suspended. This went all the way to the supreme court on the first round. That is a very expensive process. We are now going through a second wave of complaints all the way to the supreme court. Alternative solutions have been researched. One of the problems with the podiatry board and the reason they have to borrow money is the small size of the membership of the organization which is regulated by the board. We've had a previous bill which would have merged the podiatry board with the medical board. With the debt which has been accrued by the podiatry board, the medical association was not excited about that opportunity. Because of strong testimony in opposition to that bill, the bill has been defeated. The problem has not been resolved. The podiatry board continues to act in the way prescribed by statute. We continue to have legal issues that are being processed through the courts at the various levels and we as a state must find a solution. That is why this bill is before the committee. As far as the authority for the board to borrow money is concerned, we need to provide the board with a vehicle to resolve the debt which is owed as well as to continue to operate as a board, or to dissolve the board. **Senator T. Mathern** inquired what the reason was for the limitation placed in the bill that the board may borrow from the Bank of North Dakota. Why list the bank rather than say the board may borrow money. **Representative Keiser** indicated that again this is what is required statutorily. We have to give the state entities authorization to borrow from the Bank of North Dakota. They could go and borrow from a commercial institution. But we must statutorily identify that it is an acceptable practice to allow them to borrow from the Bank of North Dakota in addition to borrowing from other institutions. **Senator C. Nelson** inquired about the fact that there seems to be no limits on anything here. It

says they may loan the board funds sufficient to pay attorney fees. It doesn't say that it is for this particular case. It sounds like to her that it is for add out forever. She indicated she has a problem with that. There is no limit on the amount of money they can do, and again you are raising that fee. We have battled that fee increase for three or four sessions now. Why aren't there specific limits here? **Representative Keiser** inquired how Senator C. Nelson would put a limit on the litigation. He indicated if that could be done it would be very simple to come in the back door and say based on that we will only go to the supreme court on the current cases. That's the limit and we will go no further. How do we know that five more complaints won't be filed next year. If we had a limitation on the court action, it would be vary easy to do. This board by statute is going to continue to operate. What is going to happen he believes, and the attorney general's office is here, he thinks in short order, the attorney general's office will be the only entity defending the board because of the limitations of dollars. The attorney general's office does bill them for services and they expect to be paid. **Senator C. Nelson** indicated but there is nothing in this bill that indicates this is just for this case. It goes forever and we have umpteen boards in this state. Are they going to be standing in line outside the door, coming in and saying, hey we want to borrow money too. We want to raise our rates. Representative Keiser indicated the senator raises a good point. This is precedent setting. He doesn't like that part of it. He indicated they should tell him the solution to pay the bill and he would be all for it. He indicated his first thought was to go to the emergency fund, but then you set the precedent that every board that ever has a potential problem will just come and say gee, just go to the emergency fund. This is at least a proposal to have the members within that organization assume the responsibility and hopefully it works. **Senator Wardner** inquired how many are on the board and how many podiatrists do we have in the state of North Dakota. Representative Keiser

indicated he would defer those questions to others. He noted we have too many boards and some of them are far too small, but until we address that with significant legislation that merges the various boards this problem will not be resolved. **Senator Kilzer** indicated this is obviously not the true solution. Everybody says it is bad precedent and everything else. With a new wave of complaints coming in he doesn't see this being the ultimate solution. He indicate he agrees with Senator Nelson about their being no upper limits. Have you or your committee or anybody else discussed the necessity of bringing these small boards together to spread the risk? That is the only solution. **Representative Keiser** indicated that a lengthy discussion was held with the Attorney General's Office. They viewed this as a significant need to find a solution for merging the various smaller boards and spreading the risk. We don't have that solution and that will be highly contested. **Chairman Krebsbach** inquired about the amount of the bill. **Representative Keiser** noted that there will be people here that will be able to give you the latest figures. He indicated he has no objection in putting limit on it however, the minute the amount is limited you will shut the board down in terms of its statutory obligation. If somebody is damaged and they sue, he assumes the state can and would assume would be included in the suit. **Senator Kilzer** indicated it is the duty of the boards to protect the citizens but, when you have a smaller board it makes it difficult. Getting back to his concept of merging boards. He is not suggesting merging large boards with small boards. He is saying let's merge small boards with other small boards that are not able to carry out their duties. Where would the opposition come from for that concept? Besides the boards themselves who want to maintain their autonomy. **Representative Keiser** indicated the opposition we have seen so far comes from all of the small boards who say you don't understand our industry. You don't know what is involved so how will you make a determination about licensing, about dealing with a complaint. Those small boards want their

own autonomy and want to be able to review their own complaints relative to licensure of those who work in the field. They don't want parties who they don't believe are knowledgeable to be making those decisions and that is where the resistance we've discovered so far is coming from. Despite that we must find a solution. **Senator Dever** indicated he has two questions. 1. The bill says the board may borrow from the bank or the bank may loan. It doesn't require the bank to loan the money. **Representative Keiser** indicated that was correct. 2. Where does the board get its direction on decisions to move forward with litigation. Does that come from the attorney general's office or from the board itself? **Representative Keiser** indicated he wasn't sure if he could answer that. His understanding is that the board rarely seeks litigation. The board makes a ruling whether to suspend or revoke a license. They make that decision, they have an assistant attorney general who has been their counsel and he has indicated yes you should do this or you can't do this. They make that decision without going to court. It is when that decision has been made and gets challenged and goes through the court process up to the supreme court in this instance that the expenses are incurred. This is not done at the boards request. The board is simply defending its decision. **Sandy Tabor**, Deputy Attorney General, appeared before the committee to present background information on this particular bill. She responded to some of the questions which had been asked by the various members of the committee. She reviewed the disciplinary process with the committee. Sometimes Administrative hearings are used to avoid higher legal processes. However, this does not prevent those involved from seeking appeals in the courts. She indicated that all of this reflects the bigger issue. **Senator Kilzer** nailed it. We have a lot of boards with legislative statutes providing oversight of discipline. The problem is for small boards the proper processes and procedures are costly. There is not much you can do about it. She indicated that during the interim the attorney general's office is going to take a very

long and careful look at how legal services are provided in the state to the state agencies and to the boards. In the interim we have another problem. The law firm of Mr. Thune is owed a sizable amount of money and the attorney general's office is owed some money. There has to be some way to help the board figure out how to pay for it. **Ms. Tabor** indicated that this bill would only allow the board of podiatric medicine to borrow funds from the bank of North Dakota. Hopefully during the interim the attorney general's office can figure out something. **Senator Kilzer** indicated he was concerned about the very upper limits of this. Some litigation can run up into the hundreds of thousands to millions of dollars. What happens when those limits are reached, do we just keep going? **Senator Wardner** inquired about the total bill. **Ms. Tabor** indicated that Mr. Thune is owed somewhere in the area of \$15,000 and the Attorney General's Office about \$5,000 or \$6,000. **Senator C. Nelson** inquired that with insurance we cap it out with our self funded plan, is there something similar in insurance that the state can get that puts the cap on things too and limits our liability? **Ms. Tabor** reviewed the client protection program which the state offers to members of the State Bar Association. This might be something that could be reviewed during the interim as a probable means of funding liability to some of these smaller boards. Right now she doesn't know of anything like that. **Gary Thune**, special assistant attorney general appointed to represent the board of podiatry since late 1994. He started off by responding to previously asked questions. He indicated that his firm is owed \$17,000 to date and he believes that the attorney general's office is owed \$6,000. The board is a five member board consisting of 4 podiatrists plus one medical doctor who is not a podiatrist. There are a total of 21 full or part time podiatrists practicing in the state. Maximum dues at the present time are \$500.00. This generates about \$10,000 a year in dues and there are about \$2,000 a year in expenses for this board. Each member gets \$50.00 for two days of serving on the

board. The expenses of the board but for legal fees have been pretty much reasonable. He presented the committee with a handout giving the history of the board since 1929 when it was formed. Until 1994 it was financially solvent. Mr. Thune indicated his overall projection on expenditures is through two supreme court cases is less than \$50,000. There are three limits present here. 1. The bank, because it says the bank may borrow money to this board. They will limit themselves to what is reasonable and what appears can be paid back. 2. The \$750.00 maximum fee which may be assessed but can not go higher than that to pay these bills. He indicated that 17 of the 21 podiatrists in state support this bill with the fee maximum. He indicated this is five times what doctors pay in fees. The limit will be what will the bank borrow to an entity that can raise \$15,000 a year total through a \$750.00 fee maximum. There is a limit and that is it. Is this the ultimate solution? No! 3. The involvement of the attorney general's office. The a g's will take over that which is pending. There fees are lower and that will help to save money. He continued with the history of the boards debt which has grown as a result of litigation stemming from disciplinary actions by the board against Dr. Brian Gale. Following his presentation questions and comments were offered by **Senators T. Mathern, Kilzer, C. Nelson, and Dever** (Tape A, Side 1, Meter #'s 40.5-52.5). **Dr. Aaron Olson**, President of the Board of Podiatric Medicine, appeared before the committee. A copy of his written testimony is attached. Questions were offered from **Senators T. Mathern and C. Nelson** (Tape 1, Side A, Meter #'s 58.0 to End and Side B, Meter #'s 0.0 to .5). Appearing before the committee was **Tami Gale**, speaking in opposition to HB 1377. A copy of her written testimony is attached. There were no questions from the committee. **Dr. Brian Gale**, representing himself appeared before the committee to speak in opposition to HB 1377. A copy of his written testimony is attached. There were no questions from members of the committee. **Dr. Francisco Tello**, licensed

podiatrist, appeared before the committee offering testimony in opposition to HB 1377. A copy of his written testimony is attached. **Senator Wardner** inquired that if this bill were to be killed how would he foresee the future of this case. **Dr. Tello** indicated that it has been suggested that the entire licensing board be either partially or completely gutted. For the reasons that have been well outlined this morning. If the board in his opinion and that of others who have submitted letters, is changed because of the biased nature of the board **Dr. Gale** in private conversation has expressed to him, and number of podiatrists in the state that if this occurs that the ability of he and his attorney and the new board to come to the conclusion regarding these complaints and to take a careful look at all the expert testimony that was given in favor of **Dr. Gale**, **Tello** thinks they will come to a quick resolution on these complaints. **Senator Wardner** indicated that the bill just says that they can't borrow money. The bill doesn't say anything about changing the board make up. **Senator Wardner** indicated he was thinking if the legislature was to kill this bill what are the results. What if the board doesn't change, where does all this go? **Dr. Tello** indicated that when the original 1377 bill was presented **Dr. Aaron Olson** gave testimony that his term was up June 13th of this year and that he had no interest of ever serving again or certainly not serving another term. If he in and of himself is off that board, **Dr. Tello** feels comfortable in saying that at least one perhaps two other board members will step down. The entire board is tired of this mess. If that occurs and a new board is appointed by the Governor, whether it be by the recommendation of the association, is discussible. But, with a new board looking at all of the evidence that has been previously not utilized, I think that these complaints will be handled accordingly. There were no questions. **Chairman Krebsbach** indicated that the committee would not entertain further testimony at this time. If interested parties had further information for the committee, she encouraged them to get them to the committee in written form. At this

time the hearing was adjourned on HB 1377. On March 15, 2001 committee discussion was held on HB 1377. Senator Kilzer indicated he will attempt to not add more dirt and focus on the bill. He does not think a loan at the Bank of North Dakota is the way to go. This problem did not happen over night it's been coming on for six or seven years. This will not be the last problem like this. As we talked about Gale I, Gale II, and Gale III there may well be additional disciplinary problems by many of these small boards in the future and they all face the same problem. He had the intern draft an amendment which will be a study resolution concerning boards with less than 100 licensees or less than 200 licensees and the feasibility of putting them all under one umbrella, licensure board. He thinks the podiatry board with 4 podiatrists out of 20 that are in the state is an unworkable situation no matter even if you do a little tinkering with the board that we had in 1252 is going to answer the problem. Representative Keiser who is his running mate in elections and sponsor of this bill presented the bill very well. But, this is just a short term solution. He thinks a better solution is to let the Attorney General continue to do the lawyer work of the board and let the bill run up some more. He doesn't think the bill will run up too rapidly but it will continue to enlarge, but in the meantime we've got to get the long term situation in check. If we let them take out a loan, that loan is going to grow to hundreds of thousands of dollars. The medical board went through the same thing when they took down Dr. Christopherson in Fargo. The way Gale is going here there is no end in sight. Twenty thousand or so is just the beginning and before too many more years go by we've got to get this under control. In his opinion this is the only way to do it. He thinks the legislature made a mistake in 1929 when they set up such a small board but the litigation wasn't as conflictive as it is now and there is no lessening of litigation in the future. That's his individual feeling to not pass the bill as it presently is but to let the attorney general continue to do the work and in the meantime do a

study and work toward getting everything under an umbrella. In Minnesota all paramedical things are under one umbrella. **Senator C. Nelson** indicated that the reason we have all these boards is basically for health and safety. Is there some way that some of these things could be disassociated from state government? We've got the electrolysis which we've had the battles over, and massage therapists we've battled over, it seems there's always and they never agree within their own ranks. Here again they are groups of less than twenty. She is just wondering why they are under the code unless it's for the health and safety of the citizens of North Dakota. **Senator T. Mathern** indicates he thinks there is a reason for these boards. He thinks it is to protect the citizenry. But there is a problem of finances. He is not so sure though that the size of the board is really the ultimate test. He thinks that in a litigious society if you have five or six physician things going it could take that board down too. Especially if they were cases like Gale is fighting. He just wonders if he is not so excited either about passing the bill. I'm wondering if you would be willing to extend your study to looking at other possibilities when legal costs exceed a boards ability to address its obligations so we get some language in there about, when do you use the attorney general. Maybe we should use the attorney general sooner, or maybe we should have an insurance plan. He is a little concerned that if we just say study these small boards, every small board will feel threatened and we'll spend the entire interim dealing with their threatened feelings vs. Getting at what we need. **Senator Kilzer** indicated that he thinks they should feel threatened because this could happen to them. He has no objection in expanding the study to include what Senator T. Mathern is talking about. If there is a trigger point or a threshold where the attorney general's office has to step in. It all comes down to money and there is a problem with these small boards doing their job. It is very unlikely to happen to big boards like the medical board, or the nursing board, or even the physical therapy board. Not only

are these boards needed for protection of the public but the professionals also want their own boards. It really does come down to money and the risks that they take. If you want to expand the study and go towards insurance policies or umbrella insurance policies or whatever he has no objection to that. **Senator Dever** inquired about Senator Kilzer's comment about \$300,000. He inquired if the legislature has any oversight. **Senator Kilzer** indicated the oversight is the audit and fiscal review committee. **Chairman Krebsbach** indicated that she believes that it is the membership of the group that is ultimately liable for the bill. Why wouldn't the members individually go to the bank or send a letter of credit saying we will be responsible or liable for this debt and try and borrow the money that way. They said they can't do it on behalf of the board because the board can not borrow money without some authorization. Why can't individuals do it. **Senator C. Nelson** inquired if the chairman noticed much enthusiasm in those letters of support. **Chairman Krebsbach** called the committee's attention to something she had run across. She noted that there were conflicting letters from the same individuals submitted to the committee by two different testifiers. **Senator Dever** noted there are allegations and counter allegations. At this point **Chairman Krebsbach** indicated that the committee would hold off action on this bill. On March 22, 2001 discussion was reopened on HB 1377. **Sandy Tabor**, with the Attorney General's Office offered amendments on the bill to the committee. She also gave members of the committee a copy of the bill with the amendments incorporated into it. In reviewing the amendments she indicated in line 11 she inserted the language, subject to the approval of the emergency commission. It was her understanding that the chairman spoke with **Senator G. Nelson** about this and he thinks there is no problem with this being a request to the emergency commission. What they would be requesting is the authority to go for a loan. That might take care of some of the concerns about this being out of control in that they will have to

go in to the emergency commission any time they want to increase that loan. There will be some sort of check and balance there that may give you some sense of comfort. The other thing that was done in this down on lines 18 and 19, based on conversations that were held she sensed a concern about limitations but there was also a concern about having enough money to kind of get it taken care of. We put in alternative language in the thought that the board could kind of decide. They could either decide that they wanted to do \$1,000 a year until they paid off the loan or they could determine how much they would have to assess based on paying off the loan in three years. This way they have some flexibility to decide with their membership what they think makes the most sense. They can go up to \$1,000.00 and decide the time frame of what they want to do on this or they can decide how many years they want to pay this off in and then determine the amount of the fees they would assess. This would allow the board some flexibility. On lines 22 through 25 one of the things that Jim Fleming pointed out that in order to change their fees they have to go through a rule making process which costs them \$1,000 every time they do it. The notice part is the most expensive part of all so since they have such a small membership it would be easier to send something out by certified mail than to pay the cost to a newspaper and the notice will be, you will still get the same results. Section 2 of the bill provides the study resolution that Senator Kilzer was interested in. With just a little bit of message from the Attorney General's Office because we have a general concern about how special assistant attorney generals are being appointed and used by the boards and they would like to have an opportunity as part of this study to be able to look at the system overall and see if it isn't time to make some changes regarding legal services. That is the sum and substance of this. Senator C. Nelson inquired about shall and shall consider studying differences language which has been used in several bills. **Senator T. Mathern** indicated that these are amendments

that go way beyond what he expected. He inquired what the consequences would be if the committee elected just to do the study resolution and elected not to adopt the other proposed amendments. **Senator Wardner** commented that after visiting with the attorney general and realized there are some other ramifications and that the independent counsel would like to be paid, and they could take not only the board, but the state to court to get those, so we decided this was a better way to go. He felt like Senator Mathern does, let them sweat. He feels these amendments are good and this procedure is fine. They have to go before the emergency commission and some of the guys that are on there might give them a difficult time. **Senator C. Nelson** inquired who is on the emergency commission. **Sandy Tabor** indicated the leadership of both the house and senate, the secretary of state, someone from the governors office or the governor. **Senator Dever** inquired how this loan would work? A general discussion continued with **Senators Kilzer, T. Mathern, Krebsbach, C. Nelson, Wardner, and Dever** participating and **Sandy Tabor** responding. (Tape 2, Side A, Meter #'s 48.3-End and Tape 2, Side B, Meter #'s 0.0-10.1) **Senator C. Nelson** indicated that she would like to know what the original code was that this bill was based on. **Senator Kilzer** moved to adopt the amendments as presented by the attorney general's office, seconded by **Senator Dever**. **Senator T. Mathern** asked for a division of the question. One section would be the section about the loan provision, the other section would be in regard to the study. Roll Call Vote was taken on adopting Section A of the amendments which is everything but section 2 of the bill. 4 Yeas, 2 Nays, and 0 Absent or Not Voting. The motion prevails. Roll Call Vote was taken to adopt Section B which is section 2 of the proposed amendment. Results were 6 Yeas, 0 Nays, and 0 Absent or Not Voting. The motion prevails. A motion was made by **Senator C. Nelson** to Adopt amendments referred to as substitute amendments to HB 1377, seconded by **Senator Wardner**. Roll Call Vote indicated 5

Page 15

Senate Government and Veterans Affairs Committee

Bill/Resolution Number HB 1377

Hearing Date March 15, 2001

Yeas, 1 Nay, and 0 Absent or Not Voting. A motion for Do Pass as amended was made by

Senator Wardner, seconded by **Senator Dever**. **Senator T. Mathern** expressed his reasons for

voting no on this bill. Roll call vote indicated 5 Yeas, 1 Nay, and 0 Absent or not Voting.

Senator Kilzer will carry the bill.

Date: 7/27/11
Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 116

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Dep. [unclear] - [unclear]

Motion Made By James E. Hays Seconded By James E. Hays

[illegible]

Total (Yes) _____ No _____

Absent

Floor Assignment

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

Date: 5/20/01
Roll Call Vote #: 5

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 48 109

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken *19r1 12/24/2011 10:00 AM*

Motion Made By Samuel J. Miller Seconded By _____

[illegible]

Total (Yes) No

Absent

Floor Assignment

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

Date: 3/22/91

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 16 340

Senate GOVERNMENT AND VETERAN'S AFFAIRS

Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded
By

[illegible]

Total (Yes)

No

Absent

Floor Assignment

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

Date: 3/22/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 4612001

Senate GOVERNMENT AND VETERAN'S AFFAIRS

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do this as requested

Motion Made By Sen. J. J. O'Connell Seconded By Sen. J. J. O'Connell

[illegible]

Total (Yes) 5 No

Absent

Floor Assignment Ser. 100-24

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

REPORT OF STANDING COMMITTEE

HB 1377, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1377 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "from" with ": to provide for a legislative council study"

Page 1, line 3, remove "the Bank of North Dakota"

Page 1, line 7, replace "The" with "Subject to approval by the emergency commission, the" and remove "from the Bank of North Dakota"

Page 1, line 8, remove "or other sources, and the Bank may loan to the board."

Page 1, line 10, replace "a" with "an"

Page 1, line 11, remove "seven hundred fifty dollar"

Page 1, line 12, after "repaid" insert ", including any accrued interest. The amount of the annual renewal license fee assessed under this section may not exceed one thousand dollars"

Page 1, line 14, after the period insert "The notice of a proposed rule to assess the fee in this section or revert to the previous license fee may be sent by certified mail to each individual licensed by the board in lieu of the publication requirements for the notice in chapter 28-32."

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 2001-02 interim the ability of occupational and professional boards with less than one hundred licensees to process disciplinary complaints and carry out other statutory responsibilities. The study should address procedures used by boards to respond to disciplinary complaints and initiate disciplinary actions, the boards' ability to pay for the cost of disciplinary actions, and the legal services and staff services available to assist boards with the processing of disciplinary complaints and the performance of other statutory responsibilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly."

Renumber accordingly

2001 TESTIMONY

HB 1377

Dickinson Foot and Ankle Clinic
Cherian Mathew D.P.M.
Podiatric Physician and Surgeon

2215 Sunnyside
Dickinson, ND 58601
USA

Phone 481-6796
Fax 481-6986
Email cmathew@guest.und.edu

January 28, 2001

Government and Veterans Affairs Committee
North Dakota House of Representatives
Bismarck, North Dakota

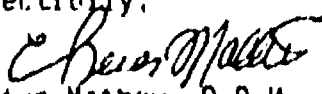
Re: House Bill 1377 - Giving the ND Podiatric Medicine Board authority to
borrow money from the Bank of North Dakota.

Dear Committee Members:

I have been practicing Podiatric Medicine and Surgery in Dickinson since 1978 and
have served on the state licensing board in the past.

Obviously, I am concerned about what is happening to my profession in this state.
I feel that only a new board made up of new members who are not involved in the
present conflict can bring an end to this ongoing, years' long litigation. Making
more money available to continue this litigious cycle is not the answer. Already the
North Dakota podiatry license renewal (\$500 per year) is one of the highest,
if not the highest, in the country. To raise that to \$750 per year is unthinkable.
I sincerely hope that this committee will not recommend passage of this
irresponsible bill.

Respectfully,


Cherian Mathew, D.P.M.

Dear Committee members:

I have been practicing Podiatric Medicine and surgery in Dickinson since 1978 and have
served on the state licensing board in the past.

Obviously, I am concerned about what is happening to my profession in this state. I feel
that only a new board made up of new members who are not involved in the present
conflict can bring an end to this ongoing, years' long litigation. Making more money
available to continue this litigious cycle is not the answer. Already the North Dakota
podiatry license renewal (\$500 per year) is one of the highest, if not the highest, in the
country. To raise that to \$750 per year is unthinkable. I sincerely hope that this
committee will not recommend passage of this irresponsible bill.

NORTH DAKOTA BOARD OF PODIATRIC MEDICINE



c/o 525 N 9th Street

Bismarck, ND 58501

701-258-8120

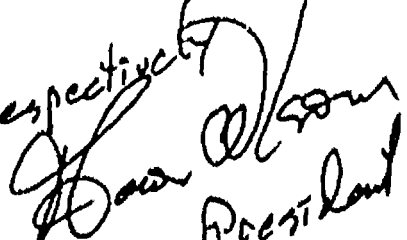
21: Podiatrists Full or Partime Practice in N.D.
5: Podiatrists Practice other Places

I Represent:

4 Podiatric Board Members Dr. Lockner
Dr. Stone
Dr. Deckert
Dr. Olson
9 letters of support

I have spoken to all but 5 of the 21 N.D. Podiatrists
4 who have not sent letters have told me they
believe Board should be solvent & pay Bill's. Feel
~~that~~ Podiatrist shouldn't have to pay for litigation ex
Dues Income or feel State should provide for legal
services

President of State Association (Abstention) supports Concept
of Bill

Respectfully

President of Board

18 Podiatrists support
Board's Autonomy



418 5th Street N.E.
Jamestown, North Dakota
58401-3360
(701) 252-1050

FAX COVER SHEET

CONFIDENTIALITY NOTICE: The document(s) accompanying this fax contain(s) confidential information which is legally privileged. The information is intended only for the use of the intended recipient named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone to arrange for return of the original documents to us.

TO: AARM OLSEN DPM Date: 2/8/01

Company: _____ Fax #: 222-0229

Phone: _____ Ext.: _____

FROM: MANUEL C. HARRIS DPM Title: _____

Ext: _____ Fax #: ☒ Medical Records 701-253-4861 ☐ General 701-253-4884

Number of pages including cover sheet: 1

Subject: HB 1377

Message: _____

I Support Passage of HB 1377

Signature: Manuel C. Harris

02/08/2001

TO: REPRESENTATIVE M. KLINE,

I WOULD LIKE IT TO GO ON RECORD THAT
I AM STRONGLY IN SUPPORT OF HOUSE
BILL #1377. I BELIEVE THAT THIS
IS IN THE BEST INTEREST OF THE
PROFESSION AND THE PUBLIC.

SINCERELY,

, DPM

CHRISTOPHER FORMANEK, DPM
NORTH DAKOTA LICENSE #43

001 222-0229

TO: Aaron Olsen DMH
FROM: Richard E. Anness DMH Meritone Fargo ND 58103
RE: House Bill 1377

Dear Dr. Olsen:

I would like to go on record in support of House bill 1377. I believe this bill to be in the best interest of the Podiatric physicians in the state of ND.

Sincerely
Richard E. Anness DMH
02/08/01



February 8, 2001

Dr. Aaron Olson
525 N. 9th St.
Bismarck, N.D. 58501

Dear Dr. Olson:

I do support HR-1377 pertaining to
the North Dakota Board of Podiatric Medicine.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Peterson".

David C. Peterson, D.P.M.

LAKE REGION CLINIC, P.C.
1001 7th STREET
P.O. BOX 1100
DEVILS LAKE, NORTH DAKOTA 58301

TELEPHONE (701) 662-2157
IN STATE WATTS 1-800-648-8898

February 8, 2001

To Whom It May Concern:

This letter is to express my opinion that I am in favor of House Bill #1377. I do believe that the bill should be passed. It is desperately needed in order for our Podiatry Board to be able to function and does its job protecting the profession and protecting the public. If you have any questions, please do not hesitate to contact me.

Sincerely,

Basem Fanous, DPM

BFidch

Basem Fanous
2-8-2001

GENERAL SURGERY
B.P. Basal, M.D.

GASTROENTEROLOGY
B. Sharah, M.D.

FAMILY MEDICINE
D.L. Grimes, M.D. P.J. Fetherly, M.D.
R.W. Petty, M.D. A.L. Rayer, M.D.
H.M. Briner, M.D. J.L. Yaeger, M.D.
Amy Cox, M.P. R.O. Sigvaldson, P.A.

INTERNAL MEDICINE
T.C. Corbett, M.D. A.B. Tahaan, M.D.
S. Sharah, M.D. R.H. Morada, M.D.
K. Sharma, M.D.

PODIATRY
B.Z. Fanous, D.P.M.
ADMINISTRATION
Judi Rott, J.
Elaine Myrd



Lee A. Hofsommer, D.P.M.

Medical & Surgical Foot Specialist
Diplomate American Board of
Podiatric Orthopedics
2431 15th Ave. S.
Fargo, ND 58103
Telephone (701) 233-6479

Aaron C. Olson DPM
Family Foot & Ankle Clinic
525 N. 9th St.
Bismarck, ND 58501

This letter is confirmation that I support HB1377 to declare
an emergency of the Board of Podiatric Medicine and to increase
licensure fees to \$750/yr.

Sincerely,

Lee A. Hofsommer DPM

RE: House Bill 1377

2-8001

From: Cherian Mathew, D.P.M.

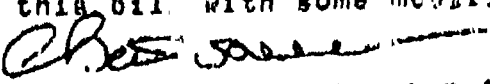
483 6986(FAX)

2215 Sims, Dickinson, ND 58601

FAX TO: Dr. Aaron Olson 222-0229

My concerns:

1. There is no limit placed on the amount that can be borrowed from the Bank of North Dakota by the ND Board of Podiatric Medicine.
2. Some efforts should be made to negotiate with the creditors to pay back the debt on monthly or yearly basis with interest. It is very possible that they might agree to this:
3. There is a provision for collecting the expenses of the investigation from the podiatrist who was investigated. This should take care of the expenses associated with investigation.
4. There is a general perception (right or wrong) that the present board of examiners will not be able to bring this conflict to a satisfactory conclusion. I feel that for the good of our state association the present board members should feel charitable enough to step aside and a new board deal with the conflict. I am not sure that the new board will be successful but this would show good faith. Then I might be able to support this bill with some modification.


Cherian Mathew FAX sent to Dr. Olson at 2:10 PM. 2-8-01

Board of Podiatry

2-08-01

I support Bill 1327
Our Board must have a method to
pay its legal obligations

Mark Kammeyer
Wahpeton, ND

DR. R. J. DECKERT
404 Trinity Professional Bldg.
80 Burdick Expy. West
Minot, ND 58701

2/8/01

As a member of the North
Dakota Board of Podiatric
Medicine I support House
Bill 1377 to allow our
board to acquire a
loan from the Bank of
North Dakota if needed.
According to the language
of the bill.

Footnotes from
DR. R. J. DECKERT

[Signature]



NORTH DAKOTA BOARD OF PODIATRY EXAMINERS

February 12, 2001

Chairman of Government and Veterans Affairs

RE: Bill 1377

Enclosed is a letter of support which had inadvertently been omitted from the packet I presented at the committee hearing and the above captioned bill on 02-09-01. I apologize for any inconvenience.

Sincerely,

Aaron C. Olson, DPM
President of the Board

Enclosures

02-13-01/jlp

February 8, 2001

Re: House Bill 1377

This is a brief but emphatic letter of support for House Bill #1377. It is my understanding that passage of 1377 would allow the North Dakota Podiatry Board to accrue debt, which in turn would allow the Board to continue to function as a Podiatric governing body. Podiatry is a medical art and science distinct from any other medical specialty. As such we should, and indeed need to be represented and governed by a board of our peers. As a practicing podiatrist in North Dakota, I believe it to be imperative that the Board be allowed to meet these ends by whatever means necessary.

Thank you.



Karen M. Rinehart, D. P. M.
P. O. Box 2655
Bismarck, ND 58502

2-8-01

Madam Chairperson and Committee Members;

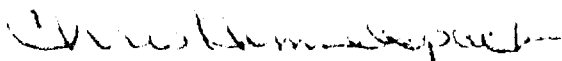
I am apposed to Bill # 1377. It is my feeling that there are serious problems with the current Podiatric board, and passing this bill will allow them to continue their corrupt and unjust practice. I do not believe that the taxpayer's money should be used in this fashion. I believe that the current board members need to be removed from this board and replaced with people who will act fairly and function as a true Podiatric Board is intended to do.

I believe that if Bill #1377 passes it will be harmful to many skillful and competent Podiatrists. And the people of North Dakota will ultimately be the ones who suffer from this loss of skill and expertise in the care of foot and ankle problems.

I believe that if Bill # 1377 does not pass, the state and the board members themselves will be forced to deal with the internal problems of this board, which is long overdue. My insight does not come from the heart alone. I work in the Podiatric field and with the people of North Dakota who require this service, every day. I know that there are serious problems and urge you to make the changes that are necessary to remedy them.

Thank you for your time and consideration.

Sincerely



Chris Himmelspach
3917 37th St. NW
Mandan ND 58554
e mail chrisHH@peoplepc.com

Dear Chariman and Committee Members:

My name is Dr. Francisco Tello. I have been practicing Podiatry in Bismarck, since September of 1995. I was an associate employed by Dr. Brian Gale my first 2 ½ years in practice. I have been employed with MedCenter One for the past three years. I have been witness to a grave injustice with regard to the Board of Podiatric Examiners' prejudicial mishandling of complaints. I have witnessed an original \$20,000 in collected licensing fees which took over 30 years to accrue, dwindle to zero in less than 12 months in late 1994 to mid 1995. I witnessed testimony presented by the president of the licensing board in the 1997 hearing before the Human Services Committee regarding Senate Bill 2068, wherein, he outlined the financial decline of the Board of Podiatric Examiners over several years concluding with a debt of approximately \$16,000 attributed almost wholly to legal debt. He went on to ask for support of Senate bill 2068 which, among other issues, stated "Each licensed and practicing Podiatrist shall pay the annual renewal license fee established by the board," please note there was no proposed cap to the licensing fee in the bill. At that time the licensing fees were \$200 per year. After testimony from members of the State Podiatric Association the bill was killed, then rewritten and submitted as House Bill 1239. It was passed capping our annual fees at \$500 per year. Testimony was given that members of the State Podiatric Association were made aware of the Senate Bill 2060 only four days prior to its hearing. The Board of Podiatric Examiners, who initiated the bill, did not feel it necessary to inform or consult the very Podiatrists they represent. Testimony before the Senate Human Services Committee and in

conversations at the next two state association meetings all revealed the consensus that we would only continue to throw good money after bad. In truth the Board of Podiatric Examiners currently owes in excess of \$20,000 comprised mostly of legal fees.

Once again the Board of Podiatric Examiners wishes to raise our licensing fees to \$750 per year.

In a letter to the president of the Podiatric Association from the president of the Board of Podiatric Examiners dated Jan 26th, he states "Because of our low numbers of licensees there is the possible increase of license renewal fees to \$750". The letter also requested the association's support for House Bill 1377. The letter failed to state that the bill had *already* been submitted by their attorney and sponsored by representatives Keiser, Berg, and Klein on Jan 22nd. In fact only due to the testimony by the Board of Podiatric Examiners' attorney at the Human Services committee hearing regarding House Bill 1262 on Jan 23rd did the Podiatrists in attendance find out about Bill 1377. Once again, the Board of Podiatric Examiners chose not to inform those they represent that they were attempting to raise our fees and worse, borrow from the public of North Dakota through the Bank of ND, unlimited funds to continue litigation cost. The combined legal expenses of all parties is pushing \$750,000... and they need more?

The majority of the Podiatrists of the state of North Dakota are embarrassed, insulted and strongly opposed to Bill 1377. We do not wish for the people of the state of North Dakota to be asked to assist in funding this travesty. We do recognize the damages this battle has caused and through House Bill

1262 with minor amendments hope to correct this injustice. This testimony, along with others, and several letters from fellow state podiatrists unable to attend, ALL respectfully ask for a do not pass for Bill 1377. Mr. Chair and committee members thank you for your time.

- Association has discussed donating funds or a loan to pay the debts incurred by

- at time ↑\$500 a great deal of discussion was had to settle this dispute.
Dr. Gale Dr. Olsen

- only after separation of ~~Dr. Gale~~ &

- Dr. Gale supported the Bill 1262 only with certain amendments

- The ^{remaining} \$25,000 is being paid autonomy but not have fiscal responsibility?

- ~~not~~ pay

- \$60,000 plus at \$750/yr ^{may} not pay this bill over 10 yrs

★ Dr. Olsen choose not to attend conference call - Roll call does

not

25 complaints of which I was heard malpractice

750
20
1000
2000
42
300
\$92000

Chairman Klein and Committee Members:

My name is Dr. Brian Gale. My address is 2418 Coolidge Avenue in Bismarck.

I am testifying in opposition of Bill #1377. I believe that the best way to correct the current debt problems with the Podiatry Board is to change the Board members immediately (not in four years); otherwise the current debt problems will worsen instead of improve.

Wednesday evening at a telephone conference meeting of the Podiatrists in the state, there were some very strong feelings that were expressed. The most important point that was agreed upon by everyone was that 1377 was proposed without having a discussion amongst the podiatrists. Instead, there was an attempt to push this through without anyone knowing about it. The fact that we had to meet to discuss 1377 after it became a bill means that someone is putting their own personal agenda and gain in front of what is really best for the podiatrists and the citizens in this state. This Bill is self-serving to say the least. The Podiatrists voted to oppose this Bill.

Another point that was discussed was that some of the current Board members were using outrageous scare tactics to try to convince the others to support 1377. The Board's attorney and the Board's president are the ones who stand to gain by having this Bill go forward in its present state. Unfortunately, they did not think the Board would ever get into so much debt. If the Board were being run fairly and ethically, there would be no problems with the current Board's finances. Why would any attorney allow their client to go so far into debt without advising the Board or all of the Podiatrists in the state for that matter about the possible risks that would go along with this debt. At least tell the Podiatrists who have been funding the effort that it is costing a tremendous amount and will put them into debt for several years.

The third point that was made is that we do not feel there is a need for a medical doctor to be on our Board any longer. This was unanimous among everyone taking part at the meeting.

The Board members should be changed immediately. There should be some way for the board members to be held accountable because of their immunity. There must be a way to keep them honest. They should not be able to prevent doctors from being licensed and they should not be able to destroy doctors who are competitors.

The following are examples of topics that are in other Board's statutes however are not in the podiatry boards statute and I think should be seriously considered to be added to ours.

1. Conflict of Interest statement: There should be a statement which discusses the conduct of the Board members and examples of conflicts of interest. The most serious conflict of interest is when a local competitor is overseeing a board as is the situation with the current Podiatry Board. If the doctor can longer practice the Board member could financially gain hundreds of thousands of dollars.
2. The medical board can remove one of the members of their board with a vote of about 70% and because there are so few Podiatrists in the state, we should have the ability to remove a board member if 70% of the licensed Podiatrists in the state agree to it.
3. Some boards have in their statute that the state association nominates people for the board and that the governor must choose from those nominations. Since there have been so many problems with our Board in this area I think this would be one way to prevent this type of problem from occurring again. There is no reason for us to have a board member on our board for 19 of the past 23 years with most of those 23 years spent as president of our board. There is no reason why some of the current board members have been on our

board for over 10 years continuously. There is also something wrong when a board member has repeatedly attempted to talk patients into suing doctors and talked patients into sending complaints to the board that he is part of. The only way the Board president can exercise his power is when a complaint is made. The more complaints, the more power whether they are legitimate complaints or not.

4. Statute of limitations for complaints. The Board should not be allowed to review complaints by patients concerning their treatment from many years prior. The statute of limitations for medical malpractice is 2 years. Why should the statute of limitations for a complaint to a board be unlimited?

There is something wrong with a board who accepts and takes relentless action against a doctor when 22 of 25 complaints come from a few competitors or patients who are seeing a local competitor.

Thank you. I would be glad to take any questions at this time.

1. Conflict of Interest statement

2. The medical board can remove one of the members of their board with a vote of about 70% and because there are so few Podiatrists in the state we should have the ability to remove a board member if 70% of the licensed Podiatrists in the state agree to it.

3. Some boards have it written into the statute that the state association nominates people for the board and that the governor has to choose from those nominations.

4. Statute of limitations.



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Medical Arts Clinic

Switchboard (701) 857-7000
Toll Free 1-800-598-1205
Fax (701) 857-7342

DATE: February 8, 2001
TO: Representatives Kelsor, Berg, M. Klein
FROM: Dr. Bradley A. McCusker, President-North Dakota Podiatric Medical Association
RE: House Bill No. 1377

Dear Representatives:

I am writing in regards to House Bill No. 1377, which is to be introduced soon. This bill is an act to create and enact a new section to chapter 43-05 of the North Dakota Century Code, relating to the authority of the board of podiatric medicine to borrow funds from the Bank of North Dakota.


A recent telephone poll amongst the podiatrists of North Dakota demonstrated that, by a margin of 9 to 6 with one abstention, this bill is not an acceptable piece of legislation and therefore cannot be supported.

We are quite concerned about the escalating costs of licensure renewal and feel that another mechanism to help offset the Board's litigation expenses needs to be found.

The North Dakota Podiatric Medical Association would welcome the opportunity to work with the North Dakota Legislature in constructing an acceptable alternative.

Thank you for your time.

Sincerely,


Dr. Bradley A. McCusker
President-North Dakota Podiatric Medical Association
BAM/slb

Committe Members:

My name is Tom Schaff. My address is
802 S 1st St, Underwood, ND.

I am here to oppose bill #1377. I believe that the
taxpayers money should not be used to bail out
the Board. It only causes more problems with good
money after bad money. If the Board has the
money they will spend it, but if it doesn't have the
money they can't spend it. I believe by changing
the Board members this would help alleviate the
problem.

Additional Testimony for H.B. 1377

Submitted by Brian Gale, DPM

1. Dr. Olson has a history of misleading the Legislative Session participants as you can see from the public documents included with this statement. In a decision by Judge Robert Brady after a hearing, he states in his Findings and Conclusions, "relative to H.B. 1479, Dr. Aaron Olson appeared and testified, among other things, "the bill doesn't change anything that is not currently being done." "...Dr. Olson specifically explained while most of the bill is merely housekeeping... it does contain a new definition of Podiatric Medicine." "In view of Dr. Olson's implication in his prepared testimony... For that rule to have an effective date of December 1, 1991, the Board had to have begun the rulemaking process almost immediately after H.B. 1479 became law, and strongly suggests that if the moving parties behind the legislation were the same as those involved in the drafting and adoption of the administrative rule, both the Medical Association and the legislature were not dealt with in good faith."

In 1997, attorney Joe Cichy testified on behalf of the North Dakota Podiatrists for S.B. 2060. During his testimony, he stated, "The association, in a telephone survey, agreed to resist a fee increase that the Board is attempting to establish through the rulemaking process. The Association members had no prior notice regarding this bill... Finally; my understanding is that the sponsor was informed that this bill was merely a housekeeping bill. As you can see, it is considerably more than that."

2. Dr. Olson lists 21 Podiatrists practicing in North Dakota and 5 of those are practicing elsewhere. The state association does not even have a list of all of the Podiatrists who are licensed in North Dakota so they could be contacted to see if they wanted to be on the telephone conference call.
3. Dr. Olson states that he "represents" 4 Board members and has 9 letters of support. However he did not submit 9 letters of support. He submitted 8 letters of support and another letter strongly opposing H.B. 1377 from Dr. Cherian Mathew. THERE IS

DRAMATIC EVIDENCE THAT OLSON AND OTHER BOARD MEMBERS USED OUTRAGEOUS MISINFORMATION TO GET PODIATRISTS TO AGREE WITH 1377.

4. Dr. Olson says that he has spoken to all but 5 of the 21 Podiatrists.

Why didn't he speak to all 21? Why did he call them in the first place? **Why didn't Dr. Olson participate in the FORMAL STATE ASSOCIATION phone conference meeting? WHY DO YOU THINK THAT HE WOULD NOT FACE NOR DID HE WANT OTHERS TO FACE KNOWLEDGABLE OPPOSITION?**

5. Dr. Olson state's, "4 who have not sent letters have told me they believe Board should be solvent & pay bills. What does that have to do with supporting H.B. 1377? **How do we know for sure that Dr. Olson really spoke to anyone?**

6. Dr. Olson also states," President of the state association (abstention) supports concept of bill. What does it mean to support the concept? Does the president of the association know that Dr. Olson was going to say this to the Committee? Why didn't the president put that in his letter to the committee?

7. Then he states, "18 Podiatrists support boards autonomy. What does that mean in regards to H.B. 1377? Dr. Olson is throwing around a lot

of numbers but the fact is that the state association took a vote where there were 15 licensed Podiatrists present. No one knows what Dr. Olson told the people whom he received his letters from and we have no proof that he talked to anyone else. Especially in light of Dr. Olson's previous misleading testimony in 1991 and 1997, his testimony on this bill should be taken very cautiously.

8. Another document included at this time is the first three pages of the analysis of the five cases that I was disciplined for in the year 2000. Dr. Harold Vogler who has an international reputation as a foot and ankle surgeon has made multiple statements about the sloppiness of the investigation, inaccuracies and obvious and overwhelming conflicts of interest of local competitors.
9. The next document is from Dr. Steven Kilwein who reviewed 90 surgical cases and found nothing wrong with any of them.
10. The last document is a jury verdict from a malpractice case involving a patient who died from the treatment of Dr. Olson. The jury decided that Dr. Olson was 41% responsible for the patient's death. The Board received a complaint from the patient's daughter and within two months the Board decided that Dr. Olson had not done anything wrong.

JANUARY 7, 1997

SENATE HUMAN SERVICE COMMITTEE
SB 2060

MR. CHAIRMAN AND SENATE COMMITTEE MEMBERS:

My name is Joe Cichy and I represent the North Dakota Podiatric Association.

Senate Bill 2060 essentially deals with two principal areas: A fee increase in Section 1, and allowing for a referral fee in Section 2.

The Association, in a telephone survey, agreed to resist a fee increase that the Board is attempting to establish through the rulemaking process. At the present time, there is a rule pending that would increase the licensure fees from \$200.00 to \$500.00. The Association members had no prior notice regarding this bill and its President only became aware of Senate Bill 2060 late last week. There was no time to poll the members about the Board's attempt to remove the cap on fees, however, with the opposition to the administrative fee increase, it is safe to say that the members would be opposed to removing the limitation the Board presently has on increasing fees.

The Association's concern is that the Board, at this time, has acted in an arbitrary and capricious manner resulting in excess costs being incurred by the Board and which continue to be incurred. In the case of Dr. Brian Gale v. The North Dakota Board of Podiatric Medicine, (in which Dr. Gale prevailed) an appeal of an order imposing discipline on Dr. Gale, the Court said: "There has been discriminatory, selective prosecution by the Board. And

It is rather obvious that the Board has held Dr. Gale to a stricter standard than it has concerning identical conduct on the part of two Board members who participated in the proceedings against Dr. Gale"; and "Despite the Board's knowledge that Board President Dr. Olson practiced co-extensively in the anatomical area claimed in the administrative complaint against Dr. Gale to be outside the scope of practice, no disciplinary action was brought against Dr. Olson."

The Court also stated that Dr. Olson's participation permeated the entire proceedings with partiality while Dr. Olson is involved in a civil suit against Dr. Gale.

As a result of the Board's handling of this matter, there are various serious concerns on the part of the Association members that this Board, with its present leadership, would abuse the fee issue if no cap is in place.

Concerning Section 2, the Association has not had time to poll its members on this issue. However, the essence of it would be to allow fee splitting, referral fees, and payments to doctors for medical services not actually or personally rendered. Clearly, this is not good public policy and should be rejected.

Finally, my understanding is that the sponsor was informed that this bill was merely a housekeeping bill. As you can see, it is considerably more than that. This Machiavellian attitude is what concerns the Association members and for that and the above reasons, the Association requests that this Committee recommend a "do not pass" on Senate Bill 2060.

Thank you for your consideration.

70223.0100

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2060

Introduced by

Senator Lips

A BILL for an Act to amend and reenact section 43-05-15, subdivision o of subsection 1 of section 43-05-16, subsection 4 of section 43-05-16.1, and subsection 1 of section 43-05-16.5 of the North Dakota Century Code, relating to licensing and disciplining of podiatrists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-15 of the North Dakota Century Code is amended and reenacted as follows:

43-05-15. Renewal of license - Fee - Established by board - Failure to pay -

Reinstatement. Each licensed and practicing podiatrist shall pay the annual renewal license fee established by the board. ~~The license fee may be increased in accordance with the number of years licensed and practicing in North Dakota, but may not exceed five hundred dollars.~~ The fee must be paid on or before the renewal date established by the board. The person is entitled to an annual certificate or license upon payment of the fee. If the renewal fee is not paid within six months after the date established by the board, the license of the delinquent licensee must be revoked and may not be reissued except upon a new application and the payment of the renewal fee established by the board plus twenty-five dollars and the costs of any hearing held concerning revocation of a license for nonpayment.

SECTION 2. AMENDMENT. Subdivision o of subsection 1 of section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

- o. ~~Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or the payment or receipt.~~ Except for the lawful distribution of professional partnerships, corporations, limited liability companies, or associations, paying or receiving, directly or indirectly, of any fee, commission, rebate, or other

compensation for ~~medical~~ services not actually or personally rendered, or for
patient referrals.

SECTION 3. AMENDMENT. Subsection 4 of section 43-05-18.1 of the North Dakota

Century Code is amended and reenacted as follows:

4. Impose a civil penalty not exceeding ten thousand dollars for each violation, the amount of the civil penalty fixed so as to deprive the podiatrist of any economic advantage gained by the violation or to reimburse the board for attorney's fees and the cost of the investigation and proceeding.

SECTION 4. AMENDMENT. Subsection 1 of section 43-05-18.5 of the North Dakota

Century Code is amended and reenacted as follows:

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter ~~may~~ shall report the violation to the board.

70583.0100

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1239

Introduced by

Representative Keiser

Senator W. Stonehjem

Voting
(902)

A BILL for an Act to amend and reenact section 43-05-15, subdivision o of subsection 1 of section 43-05-16, subsection 4 of section 43-05-16.1, and subsection 1 of section 43-05-16.5 of the North Dakota Century Code, relating to licensing and disciplining of podiatrists; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-15 of the North Dakota Century Code is amended and reenacted as follows:

43-05-15. Renewal of license - Fee - Established by board - Failure to pay - Reinstatement. Each licensed and practicing podiatrist shall pay the annual renewal license fee established by the board. The license fee may be increased in accordance with the number of years licensed and practicing in North Dakota, but may not exceed five hundred dollars. The fee must be paid on or before the renewal date established by the board. The person is entitled to an annual certificate or license upon payment of the fee. If the renewal fee is not paid within six months after the date established by the board, the license of the delinquent licensee must be revoked and may not be reissued except upon a new application and the payment of the renewal fee established by the board plus twenty-five dollars and the costs of any hearing held concerning revocation of a license for nonpayment.

SECTION 2. AMENDMENT. Subdivision o of subsection 1 of section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

- o. Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or the payment or receipt paying or receiving, directly or indirectly, of any fee, commission, rebate, or other compensation for services not actually or

M. Olson
orney

J. Cichy
orney

OLSON CICHY
ATTORNEYS



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Phone: 701-223-1524
Fax: 701-223-0855

January 15, 1997

VIA FAX 223-7865

Gary R. Thune
Attorney at Law
P. O. Box 400
Bismarck, ND 58502-0400

RE: NORTH DAKOTA BOARD OF PODIATRIC MEDICINE

Dear Gary:

Subsequent to our conversation about the interim final rule pertaining to the increase in fees for podiatrists, I had a telephone conference with John Walstad at the Legislative Council. He reviewed the notices that are on file with the Legislative Council and did not find one relative to the proposed rules that the Board of Podiatric Medicine is attempting to adopt.

Also, N.D.C.C. 28-32-02(6) provides that an agency may declare the proposed final rule to be an interim final rule effective on a date no earlier than the date of filing with the Legislative Council the notice required by §§ 4. Thus, because no notice has been filed, the proposed interim final rule cannot be effective. The subsection also requires that the agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. The most appropriate way would have been to include in the notice the fact that the Board was attempting to make this an interim final rule.

Please provide a copy of the notice to me that was filed with the Legislative Council and also the steps taken by the Board to inform every person who may be affected by this interim final rule.

I look forward to hearing from you.

Sincerely,


Joseph J. Cichy

JJC:gs
cc Dr. Brian Gale

MEMORANDUM

ROBERT N. MEALS, P.L.L.C.

TO: David Utlak, M.D.
CC: Larry Poliner, M.D.
FROM: Robert N. Meals *Bob Meals*
DATE: June 11, 2000
RE: Serious flaws in Peer Review process

I apologize for the delay in sending this information to you. The following information is derived from 27 years of experience as an attorney and 23 years of representing physicians in peer review proceedings.

The peer review process in this country today is basically a sham that has been made immeasurably worse by the immunities granted by the Health Care Quality Improvement Act of 1986 to members of peer review committees, and by state peer review privileges that are consistently used to shield misconduct by hospitals that make it difficult if not impossible for a physician who is the subject of a peer review proceeding to obtain information necessary for his or her defense.

Doctors who are granted medical staff privileges usually believe they are entitled to keep those privileges as long as their work is good and they behave as good citizens. They are further led to believe that if complaints are made about their quality of care or conduct, that the peer review process provides an avenue of relief by which the merits of such complaints can be fairly determined by their peers before adverse action is taken against their ability to practice their profession and make a living. But that is not the way it actually works. Here are the main problems with the peer review process as it stands now:

1. **Widespread abuse of the Summary Suspension procedure.** A summary suspension is supposed to be imposed only where the failure to take the action may result in imminent danger to the health of any individual. That is the law in California and the position of the California Medical Association. Years ago, most "Corrective Action" was taken after notice and a hearing to determine the validity of the complaints. However, in recent years, we almost *never* see cases of routine Corrective Action---practically every peer review proceeding today begins with a summary suspension of the physician's privileges, which means the practitioner is irreparably harmed from the beginning, regardless whether there is any merit to the complaints being made against him or her. From that moment on, the doctor will

always have to disclose the summary suspension to multiple parties---hospitals, insurance companies and managed care organizations---no matter what the outcome is or the eventual truth of the matter, and that is in and of itself harmful to their ability to practice from that point on.

2. **Summary suspensions based on criticism generated by direct economic competitors or non-objective "outside" reviews obtained by hospitals.** Some of the greatest injustices occur when a physician's privileges are summarily suspended based mainly on criticism generated by economic competitors, or by peer review organizations who are paid by the hospital to review medical records and come up with a list of criticism that can then be used by the hospital to justify a summary suspension. These untested comments are used to justify summary suspension of privileges often before the affected practitioner even knows what is being said. The suspension is imposed *without the benefit of any independent, objective outside review of the medical records in question*. Instead of being objective, it is often the product of a handful of medical staff "insiders" who make the determination.
3. **The "Standard of Care" is skewed.** Frequently, violations of the "standard of care" determined by non-objective "experts" turn out to be nothing more than a disagreement among doctors over the management of cases when both approaches are well within the standard of care. One doctor's point of view is suddenly converted into a "standard of care" not met by the physician under review, contrary to the medical-legal definition, which is usually defined by a broad spectrum of approaches to medical or surgical management.
4. **The Medical Staff Bylaws fail to provide a "risk hearing" or any meaningful hearing within thirty days, which means the damaging summary suspension is then reported to the National Practitioner Data Bank before the doctor ever has a chance to defend himself or herself.**
5. **Inadequate notice of the charges before the "due process" hearing.** The notice of summary suspension rarely even provides much insight into the basis for it. The doctor is informed of a right to request a hearing within 30 days, and only after that request is made, is more information provided. But the information provided often provides little insight into the issues. Sometimes, the hospital simply provides a list of medical record numbers with a generic list of "concerns," such as "lack of judgment," "documentation," "poor surgical technique" etc. and leaves it up to the doctor and his or her attorney to figure out what they are getting at. Only after the hearing begins do the details become known, when the doctor has no chance to prepare for the surprises being sprung on him or her by arrogant hospital attorneys.
6. **Unqualified hearing panels.** This presents a real dilemma. Usually, the doctors who are most qualified to judge whether or not the doctor under investigation has met or violated the standard of care are direct economic competitors. Since these physicians can't serve on a peer review panel, less qualified people are appointed. Just because everyone went to medical school doesn't mean they understand the nuances of a specialty like invasive cardiology. The more enlightened hospitals

02/1990 00124 000110337 PERIODICALS

sometimes obtain a true expert in the affected physician's specialty--someone who practices in a different area of the country--to be a member of the local peer review panel, and in these instances, the result is usually fairer. Another major problem these days is that the doctors who are appointed to the hearing panels are beholden in some way to the hospital--either as hospital-based physicians whose contracts include "termination without cause" clauses, which puts subtle pressure on them to agree with the hospital's point of view, or as doctors who are heavily dependent on the hospital to provide them with equipment necessary to maintain their practice.

7. **"Rambo" hospital attorneys who take a "no holds barred, win-at-any-cost" approach to peer review proceedings on behalf of their client.** Two types of legal proceedings, although adversarial, should be approached more with an interest in discovering the truth than in "winning" and "losing." One is divorce, where there can never be any real "winners," and the other is peer review, where a professional's entire career is usually on the line. Yet many hospital attorneys will stop at nothing to "win" on behalf of their client, making it as difficult as possible for the affected practitioner to defend himself or herself. They delay proceedings, fight to keep important documents such as committee minutes from being disclosed, and do the best they can to keep the doctor from effectively cross-examining the witnesses against them.
8. **Inherently unfair Hearing Procedures in the Medical Staff Bylaws.** These include making the doctor "appeal" an adverse action before the hospital or medical staff has ever proven the case against him or her; putting the "burden of proof" on the affected doctor to prove that the adverse action taken against him or her was "arbitrary, irrational or without any factual basis," which is almost impossible burden to carry, when the burden should simply be on the hospital at the beginning to prove a lack of competence or conduct that significantly disrupts its operations; allowing rank hearsay such as a report by an expert to be considered as evidence without any opportunity to cross-examine the person who wrote it; and, in many bylaws, allowing the doctor to have an attorney, *but not allowing the attorney to speak at the hearing*, which forces the doctor to present the entire case himself or herself. The latter is often seen particularly in Texas and Georgia, and in every instance I know of, it results in disaster for the doctor, who has no legal training and is inept at representing himself or herself. The worst abuse, however, is a procedure that provides that whatever decision is made by the hearing panel is then referred back to the Medical Executive Committee, which is usually the adverse party to begin with. The bylaws then provide that the MEC can "modify the 'recommendation' of the hearing committee" any way it wants. What this allows the MEC to do---and this frequently happens in cases I have seen---is simply **REJECT THE DECISION OF THE HEARING COMMITTEE WITHOUT EVEN GIVING A REASON**, and then make the doctor who just prevailed appeal that decision to the Board of Directors or Trustees, which almost always rubber-stamps the MEC's decision! This turns the whole process into a true sham (usually after the doctor has spent thousands of dollars in attorneys fees and expert witness fees trying to defend the case) because even though his or her peers sided with the doctor and recommended reinstatement of privileges, the MEC just voids the decision and the doctor loses anyway. This

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July 31, 2000

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AMBULANCE SERVICE

WEST RIVER EYE CENTER

WEST RIVER FAMILY CENTER

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GOVERNOR ED SCHAFER
GOVERNOR, STATE OF NORTH DAKOTA
STATE CAPITOL BUILDING
600 EAST BOULEVARD
GROUND FLOOR
BISMARCK, ND 58505-0001

RE: APPLICATION FOR BOARD

Dear Governor Schafer:

In mid-June 2000, the members of the North Dakota Podiatric Medical Association received a letter from our secretary requesting from our President, Dr. Brad McCusker, that anyone interested in serving on the North Dakota Board of Podiatric Medical Examiners fill out an application.

Three days later, after opening up that request, I read in the Bismarck Tribune that a person was already appointed to the Board to replace an existing member who no longer wished to serve his position. This outraged me! I even became more angry when I found out who the person was that you had appointed.

I feel I am a sensible and reasonable person, therefore I waited to give thought to this, over a month, as you can see from the date of this letter before returning any comments.

The first thing I want to make perfectly clear is that I have nothing personal against the gentleman appointed to the board. In fact, I know colleagues of mine who think very highly of him. I personally do not know him myself. This in no way reflects anything personal against the gentleman who was chosen for the board.

RECEIVED

AUG 01 2000

DAKOTA FOOT & ANKLE

Governor Schafer
July 31, 2000
Page 2

RE: APPLICATION FOR BOARD

This caused me to become suspicious. This gentleman has been a phantom to our association in the state of North Dakota. He has played no role in working on our scope of practice, nor has he attended any meetings in order to support the Association of Podiatry in the state of North Dakota. Again, I want to make it perfectly clear that I do not hold that against him, either. He chooses not to get involved, that is just fine. I have no doubt he is a fine person and a fine podiatric physician.

What I do not understand, is how he was contacted before the rest of us had a chance to even send back our application.

My concern is the terrible dilemma that the podiatrists in North Dakota are in, due to the battle between the Board and Dr. Brian Gale. I have been following that since the infancy of these problems. Again, I have to state, I do mean it is a dilemma. It has cost all of us financially, by increasing dues to the podiatrists practicing in the state of North Dakota. It has caused suspicion of the general public which affects all our podiatric practices. It has received national attention, inasmuch as warning people not to come to the state of North Dakota to practice.

With all the suspicion and uncertainty between the Board and Dr. Gale, a new member is then appointed before anyone is given the time to fill out the application. The Board also looks suspicious in that they appoint someone who has not been involved in any of the Association activities.

Governor Schafer
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Page 3

RE: APPLICATION FOR BOARD

I was just in Chicago at an education seminar, with many podiatrist and orthopedic surgeons. I was questioned by many on what is going on in North Dakota. They made me feel embarrassed being from North Dakota. I have had a number of telephone calls from people out of the state of North Dakota wondering what is going on up here. Many of these people are saying, "Why would you even practice in North Dakota"?

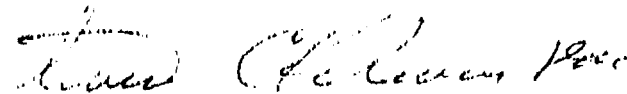
I have lived in North Dakota all my life except for the education and training time that I took out of the state. I did come back to serve the state of North Dakota. I know truly that these people do not know the whole story; I don't know the whole story. Surely, the way the new Board member was elected seems very suspicious, and I sure do not understand how this was done before anyone had a chance to fill out the application. I would like to ask, why did we get the application in the first place, then?

Governor Schafer
July 31, 2000
Page 4

RE: APPLICATION FOR BOARD

I am a native of North Dakota who went out to get experience in a field I could not get in North Dakota, but came back to serve my own state. Surely I deserve an answer and an explanation of how this process was done and which looks to be undermining the active podiatric physicians in the state of North Dakota.

Sincerely time to heal this dilemma.



Steven C. Kilwein, D.P.M.
Past President of the North Dakota
Podiatric Medical Association
CAC Representative for the North Dakota
Podiatric Medical Association

SCK/11b

CC: Bradley A. McCusker, D.P.M.
President of the North Dakota Podiatric
Medical Association

Aaron C. Olson, D.P.M.
President of the North Dakota Podiatric
Board of Medical Examiners

Brian D. Gale, D.P.M.
Past President of the North Dakota
Podiatric Medical Association



ED T. SCHAFER
GOVERNOR

State of North Dakota

OFFICE OF THE GOVERNOR
600 E. Boulevard Avenue
BISMARCK, NORTH DAKOTA 58505-0001
(701) 328-2200
FAX (701) 328-2205 TDD (701) 328-2887

July 30, 1996

Dr. Brian Gale
North Dakota Podiatric Medicine Association
107 West Main Avenue, Suite 250
Bismarck, ND 58501

Dear Brian:

Thank you for your recommendation of members of the North Dakota Podiatric Medical Association interested in serving on the North Dakota Board of Podiatric Medicine. Your help and input are appreciated.

Each nominee has been sent an application for the board. If you have any questions or concerns, please contact Naomi Gunter of my staff at (701) 328-2200.

Again thanks, Brian, for your recommendations.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ed Schafel".

Edward T. Schafel
Governor

13:02

Enclosure



D T. SCHAFER
GOVERNOR

State of North Dakota

OFFICE OF THE GOVERNOR
600 E. Boulevard Avenue
BISMARCK, NORTH DAKOTA 58505-0001
(701) 328-2200
FAX (701) 328-2205 TDD (701) 328-2887

July 30, 1996

Dr. Brain Gale
Dakota Foot & Ankle Clinic, P.C.
107 West Main Avenue, Suite 205
Bismarck, ND 58501

Dear Brain:

You have been nominated by the North Dakota Podiatric Medical Association to serve on the North Dakota Board of Podiatric Medicine. I appreciate your willingness to serve our state.

You will find enclosed an application for boards and commissions. Please return your completed form to Naomi Gunter, Executive Assistant, Office of the Governor, 600 East Boulevard-Ground Floor, Bismarck, North Dakota 58505-0001.

Thanks again, Brain, for your interest. We look forward to receiving your application.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Schafer".

Edward T. Schafer
Governor

13:02

Enclosure

recitation of the witnesses called and their testimony, nor detail the exhibits offered by the parties.

EVALUATION OF THE EVIDENCE AND APPLICABLE LAW

Complaint allegation re treating fractures of fibula and tibia as exceeding the scope of licensure: The essence of Paragraph IV of the complaint against Dr. Gale is that in treating three patients, Melvin Keator, Matthew Brorby, and Patrick Cochran, for fractures of the fibula and/or tibia above the distal part of the fibula or tibia shaft that did not involve injury or damage to the foot, he exceeded the scope of his licensure to practice podiatric medicine.

Dr. Gale testified that all of the fractures in question were in the distal portions of the fibula and tibia near the malleoli of those bones, and thus involved the "ankle and its governing and related structures," an anatomic area that a podiatrist licensed in North Dakota may permissibly treat. He added that his belief was reinforced by the fact that he was recruited to North Dakota from California in 1992 by Bismarck podiatrist Dr. Aaron Olson because of his advanced medical and surgical training and experience in treating injuries to the distal tibia and fibula, as well as the ankle and foot. In that regard, he explained that while the residency training of most podiatrists is approximately a year, he had undergone a four year residency involving surgery of the lower leg, ankle, and foot, and offered supporting testimony concerning his credentials from Dr. John Buckholz, who headed that residency program.

A fair assessment of both the complaint allegation, as well as Dr. Gale's contention, requires a look at the recent

legislative history of the licensing of podiatrists in North Dakota, as well as the administrative rules adopted by the Board.

The statutes pertaining to the licensing and regulation of podiatrists are codified at Chapter 43-05 of the North Dakota Century Code (N.D.C.C.). Prior to the 1991 session of the Legislative Assembly, the term "podiatric medicine" was not defined or used in the statutes. The scope of practice was delineated in a round-about way through the definition of the term "podiatrist." Subsection 1 of N.D.C.C. § 43-05-01 defined the term as "one who examines, diagnoses, and treats ailments of the human foot by medical, surgical, and other means" There can be no dispute that under that definition, treatment of fractures to the distal fibula or tibia was off-limits to a podiatrist.

The licensing law was extensively rewritten in 1991. H.B. 1479 of the 1991 Legislative Assembly, among other things, introduced the term "podiatric medicine" and delineated the scope of practice through the definition of that term, as is relevant here, as "the diagnosis and treatment of conditions affecting the human foot and ankle" This bill was enacted into law (1991 Session Laws, Chapter 450, § 1; N.D.C.C. § 43-05-01, Subsection 5) without revisions to this definition, and remains the same to date.

The term "ankle" has not been defined in either statute or administrative rule. However, the Board has, interestingly, attempted to expand the statutory scope of practice by means of redefining "podiatric medicine" through an administrative rule, North Dakota Administrative Code (N.D. Admin. Code) § 63-01-05-01(3), effective December 1, 1991. The scope of practice under that rule has been expanded to include "the

(

diagnosis and treatment of conditions affecting the human foot and ankle and their governing and related structures" This is significant because the gist of Dr. Gale's position, aside from what he was led to believe to be permissible when he was recruited by Dr. Olson, is that the "ankle" includes at least the malleoli of the distal fibula and tibia; the malleoli of the distal fibula and tibia are merely prominences of those two bones; thus, the distal fibula and tibia are, anatomically, within the term "ankle ... and related structures," and, as such, treatment of fractures immediately above the malleoli of either of those bones is within the scope of practice permitted of a licensed podiatrist who, as he, has the education and professional certification to do so.

Ordinarily, a duly adopted administrative rule has "the force and effect of law." [N.D.C.C. 28-32-03(3)] N.D. Admin. Code § 63-01-05-01(3) is a duly adopted administrative rule. Nevertheless, I cannot recognize this particular administrative rule, despite the status accorded it by law, for the following reasons:

According to the 1991 Committee Minutes of the House Committee on Human Services and Veterans' Affairs for February 5, 1991, relative to H.B. 1479, Dr. Aaron Olson appeared and testified, among other things, that "the bill doesn't change anything that is not currently being done." Either this is an erroneous or incomplete summary of what Dr. Olson, in fact, represented to the committee relative to the effect of H.B. 1479 on the scope of practice of podiatrists, (and that, in my experience, is entirely possible); or it is evidence that it was not the intent of the sponsors of that bill to expand the scope of

practice beyond treatment of "the foot," as the law at that time provided, and the addition of the word "ankle" was only intended to describe the ankle joint portion of "the foot;" or, lastly, but most unlikely, Dr. Olson's alleged statement was a deliberate misrepresentation. A deliberate misrepresentation is most unlikely because those minutes also reflect that Dr. Olson also submitted written testimony, which appears to be the same as Hearing Exhibit E, titled "Fact Sheet to Support House Bill #1479," in which he specifically explained that "while most of the bill is merely housekeeping ... it does contain a new definition of Podiatric Medicine." He went on to explain that the definition in H.B. 1479 had evolved from attempts by podiatrists on a national level to standardize the scope of podiatric practice in all fifty states. According to Dr. Olson's prepared testimony, in the standardized definition agreed upon by the 1990 House of Delegates of the American Podiatric Medical Association, the scope of podiatric practice included the diagnosis and treatment of conditions affecting the human "foot, ankle and their governing and related structures," but that the phrase "and their governing and related structures" was removed from the proposed bill draft after discussion with the North Dakota State Medical Association "to better match the philosophy of the State of North Dakota."

It is not apparent from the committee minutes of either the House or Senate (where Dr. Olson is recorded as having again offered prepared testimony) or the evidence of record in Dr. Gale's administrative hearing what this "discussion with the North Dakota State Medical Association" entailed, or what "the philosophy of the State of North Dakota" is. However, it seems

fair to surmise that the phrase "and their governing and related structures" was removed for the purpose of deterring podiatrists from expanding the scope of their practice beyond the foot and foot-ankle and into the lower leg on the rationale that the bones, muscles, and connective tissues there were "governing and related structures."

In view of Dr. Olson's implication in his prepared testimony that the phrase "and their governing and related structures" was deliberately removed from the bill draft in order to defuse legislative opposition by the State Medical Association, as well as to reflect "the philosophy of the State of North Dakota," the Board of Podiatric Medicine's reinstatement of that objectionable phrase by means of an administrative rule is, to say the least, most disturbing. For that rule to have an effective date of December 1, 1991, the Board had to have begun the rulemaking process almost immediately after H.B. 1479 became law, and strongly suggests that if the moving parties behind the legislation were the same as those involved in the drafting and adoption of the administrative rule, both the Medical Association and the legislature were not dealt with in good faith.

Without an adequate explanation of this situation, I must conclude that, aside from the impermissibility of an administrative agency rewriting a statutory definition by means of an administrative rule, the Attorney General would not have approved N.D. Admin. Code § 63-01-05-01(3) if the above-described events had been disclosed at the time the proposed rule was submitted to that office for the required statutory opinion. Therefore, I will only recognize the legislative delineation of

the scope of practice, that being "the diagnosis and treatment of conditions affecting the "foot and ankle," as set forth at N.D.C.C. § 43-05-01, Subsection 5. The question remains, however, as to what the addition of the term "ankle" was intended to mean.

As noted earlier, the term "ankle" is not defined in either the licensing statutes or the Board's administrative rules. The word "ankle," as used by the layman, describes the general area of the lower leg and rear foot around the malleoli of the distal tibia and fibula. However, this layman's "ankle," extending as it does into the lower leg, but not leaving identifiable boundaries, is too vague to be of practical use by a regulatory board in assessing complaints of podiatric practice beyond the scope of licensure where the treatment involves the region of the distal tibia and fibula near their malleoli.

The term "ankle" is defined in Black's Medical Dictionary as "the joint between the leg bones (tibia and fibula) above, and the talus (the Roman dice-bone) below." Therefore, in view of the unusability of the layman's definition of "ankle," the necessity of an operative definition of that term in order to administer the provisions of the law, and the medical definition of the term "ankle," I will conclude that, at least with regard to podiatric treatment of bone fractures, the term "ankle" at N.D.C.C. § 43-05-01, subsection 5, refers to a joint, and not a general anatomical area, and is intended to define the anatomical boundary between the foot and the leg, namely the talus bone, beyond which the podiatrist in North Dakota cannot practice. This means that even fractures in the malleoli of the distal fibula and tibia are off-limits to the podiatrist in North Dakota, as a matter of law,

regardless of a podiatrist's education, training, or certification in treating fractures beyond the talus. This would also be the only interpretation that would be compatible with Dr. Aaron Olson's testimony, as recorded in the minutes of the House Committee relative to H.B. 1479 that "the bill doesn't change anything that is not currently being done."

When this statutory construction is applied to the complaint allegations concerning Dr. Gale's treatment of fractures to the distal tibia and/or fibula of patients Melvin Keator, Matthew Brorby, and Patrick Cochran, the resulting conclusion is that he exceeded the scope of his licensure to practice podiatric medicine. However, Dr. Gale cannot be expected to have his conduct weighed against the hearing officer's interpretation of the law, reached after the fact, unless that interpretation also reasonably reflects the law as enforced by the licensing Board at the time the treatment occurred. The "law" in place at the time the three patients in question were treated was the Board's administrative rule defining the scope of practice as including the "ankle and [its] governing and related structures." The term "governing and related structures" has never been defined, and there was no evidence offered at the hearing to show that the Board, in adopting that administrative rule, did not intend the term to include the region in the immediate area of the distal fibular and tibial malleoli. This, coupled with hearing evidence that Dr. Gale was recruited and employed by Dr. Aaron Olson because of his training and experience in treating injuries in that anatomical region, and Dr. Olson's participation in the 1991 legislative changes and subsequent administrative rulemaking,

militates against a finding that Dr. Gale was on notice that his treatment of the fractures in question was outside the scope of podiatric practice, as interpreted and enforced by the Board of Podiatric Medicine.

Complaint allegation re failing to "properly treat" patients
Melvin Keator, Matthew Brorby, and Patrick Cochran. Prior to the hearing the Board withdrew the allegations at Paragraph V of the complaint that Dr. Gale failed to properly treat patients Matthew Brorby and Patrick Cochran, leaving only the allegation concerning Melvin Keator. The evidence relative to Dr. Gale's treatment of Mr. Keator came principally from testimony of Mr. Keator and Timothy J. Bopp, M.D., a Bismarck orthopedic surgeon, and x-rays taken by Dr. Gale and Dr. Bopp. Mr. Keator testified that he had slipped on some ice on February 5, 1993, and fractured the distal shafts of both fibula and tibia. He related that he was treated by Dr. Gale until released from his care on August 24, 1993, and at that time Dr. Gale advised him that the fractures were healing satisfactorily. Mr. Keator said that when he later began to experience pain when walking, and the pain continued to worsen, he went to Dr. Bopp.

Dr. Bopp related that Mr. Keator had come to him on December 21, 1993, for examination because he was experiencing severe pain in his lower left leg, and that x-rays revealed fibular malunion and tibial nonunion, along with an inward angulation, or varus, measured at 23 degrees, which was repaired and brought into acceptable alignment by surgical intervention on January 10, 1994. Dr. Bopp stated that this amount of varus was far beyond the maximum of five degrees considered acceptable, and

June 7, 1999

RE: Gale v. North Dakota Board of Podiatric Medicine
{Board}

Dear Mr. Norris:

Thank you for discussing the above matter with me in some detail. As you know, I have spent considerable time over the past few months reviewing voluminous documents and files materials pursuant to this action, taken against Dr. Brian Gale by the North Dakota Board of Podiatric Medicine. This action generally alleges violations of the North Dakota Statutes, under Chapter 43-05, and in specific, 43-05-16 [g.], [k.], & [u.].

This has included:

- 1.) Individual physician files from the office of Dr. Gale in the five cited cases including radiographs pursuant to same.
- 2.) The proceedings & minutes of The North Dakota Board of Podiatric Medicine's deliberations and actions aimed at Dr. Gale and obtained by Dr. Gale's legal counsel.
- 3.) Written "complaints" filed with the Board by two local Bismark orthopedists (all from the same group *The Bone & Joint Center-Dr. Bopp & Dr. Hart*), against Dr. Gale relating to various patient care cases.
- 4.) Written complaint from the administrator of the same local orthopedic group, *The Bone & Joint Center*, specifying generically, "grave concerns" about Dr. Gale's care in "several patient cases" without specifying the nature of those "concerns".
- 5.) Written complaint by one Fargo orthopedist-Dr. Johnson, relating to a patient that Dr. Johnson formerly treated and ultimately was treated by Dr. Gale with surgery-this complaint was filed with a member of the Board.
- 6.) "Excerpted report" information from Dr. Dalton McGlamry-the Board's expert against Dr. Gale in this action, incorporated in the formal Amended Complaint delivered to Dr. Gale. The full report was not provided or available for review. It is noted that Dr. McGlamry also reviewed at least three other

also reviewed at least three other complaints filed by the NDBPM also generated from petition by *The Bone & Joint Center*, against Dr. Gale and discarded them. After investigation and Dr. McGlamry's evaluation, no deviation from the standard of care (SOC) nor any violations of the North Dakota Statutes was confirmed, under Chapter 43-05, and in specific, 43-05-16 [g.], [k.] & [u. These were all dismissed. This has left five cases incorporated into the present Amended Complaint, subject herein for review and analysis.

In each of these discarded cases, it was noted that the NDBPM failed to consider all available information, and even more reckless failed obtain additional file information, known to exist, that would have substantiated and justified Dr. Gale's treatments. Equally reckless, the two complainant orthopedists also failed to obtain outside records that would have provided the necessary perspective in these same cases, which were discarded. Such proper diligence would have precluded these complaints from being filed initially.

Also notable, only one of the ultimate five complaints dated 12/20/98, filed by the Assistant AG-Douglas A. Bahr, on behalf of the NDBPM against Dr. Gale originated from a patient-Shirley Sailor. This particular complaint was received by the NDBPM on 1/29/98. All others originated from two local orthopedists of *The Bone & Joint Center*-local competitors. The one exception being an orthopedist from Fargo, Dr. Philip Johnson previously mentioned as a prior care giver of this particular patient. None of these cases involve allegations of malpractice nor are any professional lawsuits pending from these cases nor is there any evidence of factual disability resultant in any of these cases in the records.

All these cases are suspect based on existing file information that would lead the casual observer to conclude a conspiracy to harm Dr. Gale professionally exists both within the orthopedic group-*The Bone & Joint Center*, the NDBPM and it's President Dr. Olson or both. It should be noted that the President of the NDBPM, Dr. Olson, formerly employed Dr. Gale and subsequently have had a well known adversarial professional relationship. Additionally, it seems clear there is an animus to harm Dr. Gale professionally in his community based in part by anticompetitive considerations with *The Bone & Joint Center* & a few of it's orthopedic physicians as well as Dr. Olson individually along with others working in concert, within the NDBPM. Even Dr. Johnson in Fargo, another orthopedist, had previously treated the patient in question, Geraldine Parsley and failed to consider all information available, in particular Dr. Gale's records, prior to filing his complaint against Dr. Gale to the NDBPM. Also notable, none of these cases has resulted in professional litigation against Dr. Gale by the involved patients. This is in spite of efforts

to provoke same by some of the orthopedists directly with attorneys as evidenced by file correspondence.

Also consider the complaint filed by Dr. Hart (again, of *The Bone & Joint Center*) related to Gladys Wright. The NDBPM's own expert Dr. McGlamry, notably indicates that Dr. Hart himself (the complainant in this particular case) demonstrated "lack of competence or judgment" as well as other notable failures in his records. This included failure recognize and document loosened screws and problems with the internal fixation, obvious wrongful flexion position of the fusion site and malunion, in his improper surgery to this patient, which in the opinion of Dr. McGlamry, will result in the need for further unnecessary risk and surgery!

And finally, as a backdrop, please note that the Dr. Olson, the President of the NDBPM is involved as a care provider significantly in three of the present five cases that have resulted in complaints against Dr. Gale. Two cases-Gladys Wright and Shirley Sailor-were previously operated by Dr. Olson and resulted in serious post operative problems quite apparently due to inappropriate surgery performed by Dr. Olson some years earlier. Both of these cases resulted in destroyed joints that were avoidable by proper technique and surgery. A third case of the five involved in this action against Dr. Gale by the NDBPM, also involved Dr. Olson as a first assistant in surgery to Dr. Gale-Patricia Lautenschlager.

Many of these issues and questions are legal questions, and will be undertaken by Dr. Gale's legal counsel. It is revealing however, to demonstrate the environment in which these proceedings are taking place. There is overt hostility demonstrated between Dr. Olson (Dr. Gale's former employer), *The Bone & Joint Center*, and in particular, the orthopedists Dr. Hart and Dr. Bopp. Professional discrimination is a frequent general occurrence in the orthopedic community against podiatric surgeons, which is well known professionally and quietly discussed behind closed doors. (See attachment from the American College of Foot & Ankle Surgeon). With this background perspective, I would like to proceed with the individual complaints and allegations made by NDBPM against Dr. Gale mostly by hostile competitors. The format will address mostly the opinions and "criticisms" by the NDBPMs expert, Dr. McGlamry. "The Defense response" will also simultaneously address the formal Board Complaints, which in part, are also included in Dr. McGlamry's criticisms.

1.) Gladys Wright:

Final Summary given by Steven Kilwein, DPM Regarding a Review of
Brian Gale, DPM
Review Conducted: April 17 & 18, 1999

After extensive review of 90 charts regarding Brian Gale, DPM, I have come up with a couple of conclusions.

Although it must be realized that without x-rays for most of these cases, a total accurate review probably cannot be made. But relying on documentation and concentrating on a couple of important areas, I am confident in reporting that there are no patterns that I can identify.

Dr. Gale's operative time was very reasonable in all cases that I reviewed and his blood loss was also quite reasonable in all cases that were reviewed. Procedure time was very compatible with safety for the patient and for cost effectiveness. Also, no cases were accomplished in an unusual fast rate of time.

All cases showed a well documented H&P performed by Dr. Gale but there were some questions I had regarding the H&P based on bylaws. I'm not sure what the bylaws at St. Alexius read but many of the charts reviewed had no H&P done by a medical doctor. Some cases involved general anesthetics which I believe are always supposed to have a medical doctor H&P. I do know that the anesthesiologists do these many times because many of the H&P's that were done by anesthesiologists were documented. In other places I could not find any documentation of this although it may have been included with the review and evaluation the anesthesiologist made with the patient and it just was not documented in the same nature as many of the others.

Again, an area of concentration was to make sure that all pre-operative indications were documented appropriately. I found no discrepancies although without x-ray examinations with many podiatric cases, there could be some chance of error. Although, too, many times each physician has their own preference of the type of surgery they would like to do based on their evaluation of x-rays. But in all cases the documentation did show appropriate indications to do the surgeries that were performed.

Also, all of Dr. Gale's operative reports were complete, accurate and very timely. In reviewing his operative reports and his H&P's, the pre-operative diagnosis seemed to always coincide well with post-operative findings.

In most cases all the necessary information recorded by the physician was in a timely manner and in the patient's medical record. There were a couple of discharge summaries that looked like they had been missed or maybe I didn't find them in the right spot. Again, I don't know if the hospital requires a discharge summary.

In my review of the records, very few patients were in the hospital as most were outpatient. In the cases reviewed, the patients did have rounds made on them daily although there were a couple of missed rounds. One was excused by the blizzard and one of the others may have been the result of the sheet actually lost because there was no documentation of that day by any physician.

Review of Brian Gale, DPM
Page 2

An evaluation of the charts showed that post-operative care seemed to be adequate but again most of these were outpatient and there would be no post-operative follow up other than the post-operative orders which were timely and accurate.

No consistent complications were recognized in reviewing the charts. The few that were noted seemed to be handled appropriately and in a timely manner.

My conclusion is that there were no aspects of any of the patient's charts that I reviewed for evaluation and treatment that would make me uneasy or uncomfortable. I actually found no patterns consistent with any problems and although I may disagree with some of the techniques used only because I do not do it that way, I find no techniques Dr. Gale uses inappropriate.

Thank you for your confidence in allowing me to review these charts.

Sincerely yours in healthcare,

Steven C. Kilwein, DPM

Im

COPY
IN DISTRICT COURT

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-95-C-1917

Hollis Holsveen, personally,
and as personal representative
of the Estate of Milo W. Holsveen,

Plaintiff,

vs.

Aaron C. Olson,

Defendant.

VERDICT

Adhering to these instructions, we the jury, for our Verdict, answer the questions as set forth herein in accordance with the instructions already given as follows:

QUESTION 1: Was the Defendant negligent in the medical services provided to Milo Holsveen during the period of September 27, 1990, through October 1, 1990?

ANSWER: Yes
(Yes or No)

If your answer to Question 1 is "no," omit all other questions, the presiding juror shall then sign the Verdict form and notify the bailiff.

If your answer to Question 1 is "yes," please proceed to answer Question 2.

QUESTION 2: Was the negligence of the Defendant the proximate cause of injury to Milo Holsveen?

ANSWER: Yes
(Yes or No)

If your answer to Question 2 is "no," then you omit all further questions, sign the verdict form and notify the bailiff.

If your answer to Question 2 is "yes," then you should proceed to the next question.

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QUESTION 3: Was Milo Holsveen at fault, as defined in these instructions, for his own injury or death?

ANSWER: Yes
(Yes or No)

If your answer to Question 3 is "no," then you should omit Question 4 and answer the remaining questions.

If your answer to Question 3 is "yes," then you should proceed to answer the remaining questions.

QUESTION 4: Was the fault of Milo Holsveen a proximate cause of the injury or death suffered by Milo Holsveen?

ANSWER: Yes
(Yes or No)

QUESTION 5: Were other medical professionals negligent in the medical care and services provided to Milo Holsveen during the applicable period of time?

ANSWER: Yes
(Yes or No)

If your answer is "no," omit Question 6. If your answer is "yes," then proceed to answer remaining questions.)

QUESTION 6: Was the negligence of persons other than Defendant Aaron Olson or Milo Holsveen a proximate cause of injury to Milo Holsveen?

ANSWER: Yes
(Yes or No)

QUESTION 7: Based upon your answers to the foregoing questions, what percentage of negligence do you assign to:

Others	<u>20</u> %
Defendant Aaron C. Olson	<u>41</u> %
Milo Holsveen	<u>39</u> %
	100 %

QUESTION 8: What amount of damages, if any, do you award to Plaintiff Hollis Holsveen:

- A. Past economic damages (Wrongful death) \$ -0-
- B. Loss of love, affection, and support by Milo Holsveen (Wrongful death) -0-
- C. Milo Holsveen's pain & suffering (Injury) -0-

TOTAL DAMAGES \$ -0-

QUESTION 9: Is plaintiff entitled to interest on damages as awarded above?

ANSWER: No
(Yes or No)

QUESTION 10: If you awarded interest on damages, what interest rate do award, not to exceed six percent?

ANSWER: NA %

Dated this 23 day of October, 1998, at Bismarck, North Dakota.

William A. Elkin
PRESIDING JUROR

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1262

Introduced by

Representatives Porter, Brusegaard, Delzer, Devlin

Senators Andrist, Cook

1 A BILL for an Act to create and enact a new section to chapter 43-05 of the North Dakota
2 Century Code, relating to the cost of disciplinary proceedings undertaken by the state board of
3 podiatric medicine; and to amend and reenact section 43-05-03 of the North Dakota Century
4 Code, relating to the state board of podiatric medicine.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 43-05-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-05-03. Board of podiatric medicine - Appointment of members - Term of office**
9 **- Qualifications - Vacancies - Duties - Quorum - Records.** The board of podiatric medicine
10 consists of ~~five~~ six persons appointed by the governor for a term of four years each with the
11 terms of office so arranged that ~~one term only expires~~ no more than two terms expire on the
12 thirteenth day of June of ~~each~~ any year. A member of the board may not serve for more than
13 two successive terms. A member may not be reappointed to the board after serving two
14 successive terms unless at least two years have elapsed since the member last served on the
15 board. Four members of the board must hold doctor of podiatric medicine degrees and must
16 have practiced podiatric medicine in this state for at least two years before their appointment,
17 ~~and the fifth person~~ one member must be a doctor of medicine, who holds a doctor of medicine
18 degree and has practiced in this state for at least two years before the appointment, and one
19 member, who is designated as a public member, must be a resident of this state, be at least
20 twenty-one years of age, and may not be affiliated with any group or profession that provides or
21 regulates health care in any form.

22 A member of the board shall qualify by taking the oath of office required of civil officers
23 and shall hold office until a successor is appointed and qualified. The governor shall fill any
24 vacancy by appointment for the unexpired term. The board may employ and compensate

Fifty-seventh
Legislative Assembly;

1 attorneys, investigative staff, clerical assistants, or others to assist in the performance of the
2 duties of the board.

3 A majority of the board constitutes a quorum to transact business, make any
4 determination, or take any action. The board shall keep a record of its proceedings and of
5 applications for licenses. Applications and records must be preserved for at least six years
6 beyond the disposition of the application or record or the last annual registration of the licensee,
7 whichever is longer.

8 **SECTION 2.** A new section to chapter 43-05 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Costs of prosecution - Disciplinary proceedings.** In any order or decision issued by
11 the board in resolution of a disciplinary proceeding in which disciplinary action is imposed
12 against a podiatrist, the board may direct the podiatrist to pay the board a sum not to exceed
13 the reasonable and actual costs, including attorney's fees, incurred by the board in the
14 investigation and prosecution of the case. When applicable, the podiatrist's license may be
15 suspended until the costs are paid to the board.

Fifty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1377

Introduced by

Representatives Kelser, Berg, M. Klein

1 A BILL for an Act to create and enact a new section to chapter 43-05 of the North Dakota
2 Century Code, relating to the authority of the board of podiatric medicine to borrow funds ~~from~~
3 ~~the Bank of North Dakota~~; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 43-05 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Loan for litigation expenses.** The board may borrow ~~from the Bank of North Dakota,~~
8 ~~and the Bank may loan to the board,~~ funds sufficient to pay for attorneys' fees and costs
9 incurred in investigations, administrative proceedings, and litigation resulting from the board
10 performing its duties, ~~subject to the following conditions:~~

- 11 ~~1. The board has depleted the board's financial reserves.~~
- 12 ~~2. The attorneys' fees and costs incurred exceed the total dollar amount of all license~~
13 ~~fees received for the year in which the board is borrowing the funds.~~
- 14 3. ^{may} The board is assessing the maximum annual renewal license fee permitted under
15 section 43-05-15 at the time funds are borrowed.
- 16 ~~4.~~ Notwithstanding section 43-05-15, the board ^{may} establishes a seven hundred fifty
17 dollar annual renewal license fee for each year following the issuance of a loan
18 under this section, and the fee ^{shall be} maintained until the loan is fully repaid.
- 19 ~~5. The Bank of North Dakota may not charge interest on the loan which exceeds the~~
20 ~~prime rate less two percent.~~
- 21 ~~6. The duration of the loan may not exceed ten years.~~
- 22 ~~7.~~ Once the loan is paid in full, the annual renewal license fee reverts back to the
23 amount established by the board before the issuance of the loan.

24 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Madam Chair Lee and Committee Members:

My name is Dr. Brian Gale. My address is 2418 Coolidge Avenue in Bismarck.

I am testifying today in support of HB 1262.

I have testified at the House Committees in regards to bill 1262 as well as 1377. I am submitting my testimony from these two committees as part of today's testimony as well.

There are serious problems with many of the professional licensing Boards in North Dakota. Many of these problems are due to professionals submitting complaints or coercing patients or clients into submitting complaints about their competitors.

There are several examples of "sham peer review" that I know of including my own current situation. There is certainly a better way to run a Board than to have a president who has been in that position for approximately 19 of the past 23 years and to allow that same person to hand pick all of the Board members during that time. There is something wrong when a board's statute states that there are 4-year terms and only two board members change over a 12 year period. There is something wrong with a board where there are no term limits for its members. It is a step in the right direction to finally have the term limits in this bill.

I realize that this committee has only limited power to make changes. However, part of the purpose of my testimony today is to bring this serious problem to the forefront so that changes can at least begin to take place.

There are doctors, lawyers, architects, police officers, cosmetologists and others who could not work in this state due to problems with their respective Boards.

Competitors using the peer review process and the immunity that goes along with it have forced professionals out of the state or disciplined them unfairly. If you are not familiar with this personally just ask Senator Andrist because he is all too familiar with it.

I would like to specifically point out a problem with the wording of this bill in regards to the last sentence. It states, "When applicable, the Podiatrist's license may be suspended until the costs are paid to the Board."

On the surface, this appears to be reasonable because the Board should be able to suspend a Podiatrist's license if the Podiatrist refuses to pay costs from a disciplinary action. It is also logical that the Board would want to be paid and this is a means to make sure that the Board is paid.

However, let us assume that the Podiatrist cannot pay the amount that is owed. Let us assume that the Board has made an unreasonable demand for payment such as a large payment that is due on a certain date and the Podiatrist does not have the financial means to pay this sum. Then the Podiatry Board can suspend this license and not only does the Podiatrist have to stop practicing but the Board never gets payment either.

The Board can use this to put someone out of business rather than using it as a means to ensure the Board is paid. The result is that the Podiatrists in general from all over the state finance the destruction of a competitor of a Board member. I would suggest that the wording is changed so that if there are financial limitations preventing payment of the costs of disciplinary action that a reasonable payment plan be instituted.

Approximately two weeks ago, the State Association for Podiatrists in North Dakota met via phone conference. There were 15 of the 21 licensed Podiatrists who participated in this meeting. There were several issues discussed concerning HB 1262 and 1377.

There was unanimous agreement that we prefer not to have a Medical Doctor on the Podiatry Board any longer. The original purpose of having an MD was to gain "respect" from Blue Cross/ Blue Shield because at the time this insurer did not accept Podiatrists. The feeling at this meeting by everyone including two of the Board members is that an MD can be of very little help when discussing disciplinary issues especially the current MD because he is not a surgeon. We felt that another Podiatrist should replace the MD.

The following are some of the topics that are in other Board's statutes and I think should be added to the Podiatry Boards statute.

1. Conflict of Interest Statement: There should be a statement which discusses the conduct of the Board members and examples of conflicts of interest. The most serious conflict of interest is when a local competitor is using a board for personal gain and abuse of power as is the situation with the current Podiatry Board. If a competitor is put out of business, the Board member could potentially gain HUNDREDS OF THOUSANDS OF DOLLARS.
2. The Medical Board can remove one their Board members with a vote of about 70% of it's members. There must be some way to be able to have a system of checks and balances whereby the Podiatrists in North Dakota have some say in how their licensing fees are spent and in turn to be able to nominate and

remove Podiatrists who are not serving the majority. The non Board Podiatrists should be able to remove a Board member if they are unhappy with their conduct.

3. Some boards have in their statute that the state association nominates members for the board and that the governor must choose from those nominations. Since there have been so many problems with our Board in this area of appointing members to the Podiatry Board, I think this would be one way to prevent this type of problem from occurring again. There is no reason for us to have a board member on our board for 19 of the past 23 years with most of those 23 years spent as president of our board. There is no reason why some of the current board members have been on our board for over 10 years continuously. There is also something wrong when a board member has repeatedly talked patients into suing doctors and talked patients into sending complaints to the board. The only way the Board president can exercise his power is when a complaint is made. The more complaints, the more power; whether they are legitimate complaints or not.

4. Statute of limitations for complaints. The Board should not be allowed to review complaints by patients concerning their treatment from many years prior. The statute of limitations for medical malpractice is 2 years. The Podiatry Board's own statute states that it's records only have to be kept for six years. Why should the statute of limitations for a complaint to a board be unlimited? I admit that this last suggestion is self-serving because the Podiatry Board has recently submitted a complaint for a formal hearing against me that is from a patient whom I treated eight years ago.

There are many state boards and hospitals in the United States that have serious problems with the peer review process. I have personally spoken and corresponded with many professionals who have had unwarranted actions taken against them. These are not disgruntled doctors who have murdered their wives or had sexual intercourse with their patients while the patient was under anesthesia. These professionals have not been found guilty of trafficking drugs or other criminal acts.

There is a growing trend nationally to revise the peer review process because of the tremendous potential for abuse. The time has come for North Dakota to begin revising the process of peer review as well and I believe that the place to start it is with this Committee today.

Thank you. I would be glad to take any questions at this time.

Re: HB 1377
Testimony of: Gary R. Thune
Special Assistant Attorney General
Legal Counsel to the North Dakota Board of Podiatric Medicine
Before: The Senate Governmental and Veterans Affairs Committee
Senator Karen Krebsbach, Chairman
Date: Thursday, March 15, 2001

<u>DATE</u>	<u>EVENT</u>
July 1, 1929	Board of Podiatric Medicine created by Legislative Assembly via Ch. 43-05, N.D.C.C.
1929 - 1994	Board financially sound; No Formal Complaint Procedure Required
1993	Dr. Brian Gale forfeits podiatric license in California, with formal charges pending, and comes to North Dakota
1993	Two Improper Surgery Malpractice Events Occur
1994	First Formal Complaints (5) against Dr. Gale
1994 - 2000	Second and Third Sets of Formal Complaints (20) [See attached]
1995 - 1996	Dr. Gale's Malpractice Insurance Nonrenewal by Podiatry Insurance Co. of America (PICA) Nonrenewal upheld by U.S. District Court and Eighth Circuit Court of Appeals.
1997	N.D. Supreme Court upholds disciplinary action taken by N.D. Board of Podiatric Medicine - Gale I
March, 2000	Drug Enforcement Administration prohibits Dr. Gale's possession and dispensing of controlled substance prescriptions
November, 2000	District Judge Riskedahl confirms decision of NDBPM in Gale II.
Today (03/15/01)	Gale II on appeal to ND Supreme Court Gale III formal charges pending NDBPM indebtedness - approximately \$23,000.00

Complaints filed against Dr. Brian Gale - 1994 through 2000

(Not including First Set of Complaints¹, filed prior to Special Ass't Atty General Thune's appointment as legal counsel to the North Dakota Board of Podiatric Medicine [NDBPM])

Patient/Complainant	Date Filed	Source
Nancy Miller ²	04/01/94 [*]	Dr. Mark B. Hart - Bone & Joint Center
Johanna Johnson ²	11/25/94 [*]	Individual complaint to Office of Attorney General
Doug Lawrence ²	No date	Lawrence wrote to workers' comp
Cheryl Wetzstein ²	10/13/94 [*]	Dr. Mark B. Hart - Bone & Joint Center
Geraldine Parsley ²	06/12/95 [*]	Dr. Philip Q. Johnson - Orthopaedic Associates of Fargo
Gwyn Herman ²	12/20/95 [*]	Letter to GRT from Richard A. Rodecker - Bone & Joint Center
Corrine High Elk ²	12/20/95 [*]	Dr. David H. Larsen & Richard A. Rodecker - Bone & Joint Center
Patricia Lautenschlager ²	12/20/95 [*]	Letter to GRT from Richard A. Rodecker - Bone & Joint Center
Margie Pulkrabek ²	12/20/95 [*]	Letter to GRT from Richard A. Rodecker - Bone & Joint Center
Patty Greer ²	10/30/96	Letter to GRT
Marbelle Putz ²		Dr. Mark Hart - Bone & Joint Center
Karen Dryden ²		Dr. Timothy Bopp - Bone & Joint Center
Gladys Wright ²	01/07/98	Letter from William A. Strutz, counsel for The Bone & Joint Center
Shirley Sailer ²		Hand written note from patient - no date, no addressee
James Allmer ³	02/04/00	James Allmer's letter
Peggy Mehlhoff ³	02/18/00	Mehlhoff's letter to Board & Governor
Lila Gienger ³	02/10/00	Gienger & Dr. Manuel Harris - Jamestown
Bill Morrell ³	02/25/00	Morrell's letter to Board & Governor
Donald Hoesel ³	04/20/00	Hoesel's letter & Bone & Joint Center
Karen Marter ³	04/26/00	Marter's letter to GRT

^{*} Date of physician's letter

¹ Gale I

² Gale II

³ Gale III

Summary of Sources of Complaints: 10 - Orthopaedic Surgeons (Bismarek & Fargo);

7 - Individual letters (some incl. podiatrist's input)

3 - Letters solicited by Dr. Gale of former patients.



Aaron C. Olson, D.P.M.

diplomate
 American Board of
 Podiatric Surgery

Fellow
 American College of
 Foot & Ankle Surgeons

a member of **PrimeCare**
 health group

Associate
 Dale V. Hansen, D.P.M.

March 12, 2001

Senator Krebsbach and members of Government and Veterans Affairs Committee

RE: Support of House Bill 1377

Senators,

My name is Aaron C. Olson, DPM. I practice Podiatric Medicine in Bismarck, North Dakota. I am currently President of the North Dakota Board of Podiatric Medical Examiners.

I represent the four Podiatric Board Members, Dr. Lochner, Dr. Stone, Dr. Deckert, and myself as well as the physician member Dr. Moen in stating our unequivocal support for House Bill 1377. I have also included letters of support from 13 Podiatrists who practice full or part-time in North Dakota. At the current time, we have 21 Podiatrists practicing full or part-time in North Dakota and 4 Podiatrists who have North Dakota licenses that practice elsewhere. Of these doctors, three support the concept that our Board should be autonomous and have the ability to pay its own expenses. Of those doctors who practice in the state of North Dakota who have not sent letters of support, they feel our Board should be free standing and autonomous, however, this mechanism of financing our debt and debt repayment is not something they wish to support.

I must apologize for much disinformation that has been brought to this and other committees. Much of it has been directed at me personally. I must equivocally state that I have had no involvement of any form in the disciplinary actions nor complaints that have resulted in our indebtedness. This has been addressed in multiple legal and court proceedings and has not held up to multiple challenges in the court.

I respectfully request a do pass of 1377.

Sincerely,

Aaron C. Olson, DPM

*P.S. IN the last year I have
Received 22 inquiries on how
To File a complaint with
our Board.*



400 E. Burdick Expy.
Post Office Box 1489
Minot, ND 58702-1489

Medical Arts Clinic

Switchboard (701) 857-7000
Toll Free 1-800-598-1205
Fax (701) 857-7342

DATE: MARCH 2, 2001
TO: DR. AARON OLSON - PRESIDENT NORTH DAKOTA BOARD OF
PODIATRIC MEDICINE.
FROM: BRADLEY A. MCCUSKER, DPM
RE: HOUSE BILL NO. 1377

Dear Dr. Olson:

I am writing in regards to House Bill No. 1377 which is an act to create a new section to chapter 43-05 of the North Dakota century code, relating to the authority of the board of podiatric medicine to borrow funds from the Bank of North Dakota.

Although I personally abhor the escalating cost of licensure renewal, I feel it is important to support House Bill No. 1377 because of its implications in keeping the North Dakota Board of Podiatric Medicine autonomous.

This is my own opinion as a practicing podiatrist in North Dakota. This is not to be misconstrued as the opinion of the North Dakota Podiatric Medical Association.

Sincerely,



Bradley A. McCusker, DPM
Department of Podiatry

BAM/ads



Aaron Olson DPM
525 N. 9TH ST.
Bismarck, ND 58501
Fax 1-701-222-0229.

Dear Aaron Olson
I support the medical boards measures
to become financially solvent so that it
may continue to function as an
independent board.

Samuel W. Howell DPM
1000 S Columbia Rd.
Grand Forks, ND 58201
701 780 6792



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58639-7530

(701) 567-4561
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MARCH 5, 2001

AARON C. OLSON D.P.M.
PRESIDENT NORTH DAKOTA PODIATRIC MEDICAL ASSOCIATION
525 NORTH 9TH STREET
BISMARCK, ND 58501

Dear Dr. Olson:

The work the Board has been involved in over the past few years has been frustrating, not only to its members, I'm sure, but the entire association and of course, myself, as well.

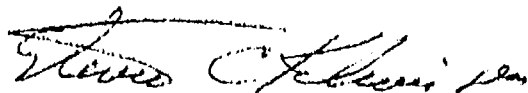
There still seems to be a number of unanswered questions and unfortunately, a number of suspicions. I think for me the most difficult task is trying to understand the entire mechanics of what has been going on. I feel uncomfortable with what this situation may bring. There seems to be no known limit of how much money can and will be borrowed. I don't feel I understand the repercussions that this may all have.

Therefore, it is difficult for me to support Bill 1377 one way or the other. Even though I am undecided, I do want to show my support that I feel the Board needs to keep its autonomy and have a means of paying for its responsibilities. I also feel that we need to be able to have a means of keeping legal representation and to continue doing appropriate investigations and disciplines that are necessary.

Dr. Olson
March 5, 2001
Page 2

I do hope that the items that have brought this all about with the unusual requests to the legislature for permission to borrow money may come to a speedy resolution, as it is hurting the entire North Dakota Podiatric profession.

Sincerely yours in podiatric medicine,

A handwritten signature in cursive script, appearing to read "Steven C. Kilwein".

Steven C. Kilwein, D.P.M.
West River Health Clinics

SCK/11b

Madam Chair and Committee Members:

My name is Tami Gale. My address is 2418 Coolidge Avenue in Bismarck. I am here to testify against House Bill 1377. I am not only here as Dr. Brian Gale's wife, I am here as a tax paying citizen of North Dakota. And as a tax payer I am very angry at the thought of my hard earned tax money going to such a worthless cause. I feel there are other programs and agencies that this money could better serve.

I'm also concerned about the amendment that was added to this bill when it was brought back to the House Committee. This amendment is very vaguely stated and if interpreted wrongly the Board could accept donations and payoffs from competitors and other people in direct competition with certain doctors in an attempt to destroy his or her practice and career.

I'm also wondering how the Board plans on paying this loan back and if a forgiveness of debt is asked for then once again the burden will be placed on the tax payers.

I am also here as Dr. Gale's wife. I'm here to tell a story and give examples of what can and has happened when a Board is left to supervise itself with no checks and balances to ensure that fairness and justice is carried out properly. I met Brian in 1994 and we have been married for four years and have two beautiful children. I can not begin to tell you what this has been like to live through this. There have been many lies told not only about

myself but about Brian in an attempt to sway people's opinion into thinking that he is a bad person, and as Gary Thune has compared him to a criminal. I think the true criminals here are the individuals who have stood before you and misled you into thinking that this bill is for the benefit of all the Podiatrists and not just a certain few. This has had a tremendous effect on not only our life but on the lives of our families and friends. We have acquired a tremendous amount of debt and most of my husbands' time is spent trying to defend himself against these ruthless tyrants.

I am not an MD, Podiatrist or a nurse. I have a social work degree and work at Manchester House in Bismarek dealing with children who have emotional disturbances. So what I'm about to say may at first not seem to bare much weight but it does. At the beginning of this nightmare I tried to separate myself from the situation not only because of it being so stressful but thinking it was too complicated for me to understand. But after a Board meeting in Jamestown in 1999 I picked up the complaints and records and came to the conclusion as a person with one biology class to my name that my husband had done nothing wrong. I would like to give you a few examples of how my husband was disciplined and to give you a better idea on how the Board has acquired this outrageous debt.

One of the reasons Brian was disciplined was for not taking x-rays during a surgery he performed. What's amazing to me is not only did he in fact take those x-rays but the x-rays are in the record and there are reports from Brian as well as a radiologist that are also in the record. Brian pointed this out to the Board members several times in writing. When

I reviewed the record there was indeed an x-ray so you can ask how five supposedly highly educated men came to the conclusion that it did not exist.

One other complaint that I will use as an example was the Board disciplined Brian on the basis that he didn't do enough conservative care prior to surgery. The ironic and almost funny thing about this case was that Dr. Fanous had referred this patient to Brian after he felt that his services were no longer helping this patient and that surgery that Brian could do was needed. The Board not only did not ask for Dr. Fanous's records that would have clearly shown he had done the conservative care but also chose to ignore a letter sent by Dr. Fanous stating that he had done the conservative care. A few years ago my daughter was being treated by a family practice doctor for chronic ear infections. After many months of treatment this doctor referred her to an ear, nose and throat specialist and a few days later she was in surgery for tubes removal of her adenoids. Should this doctor have had to go back to point A to justify doing surgery on her?

There are a few things I would like to ask you before you cast your vote. I would like you to take a few moments and think about if this was happening to you. Think about if this was your wife or husband better yet your child. Think about your child going through four years of college and getting accepted into medical school and then being accepted into the first four year surgical residency in the United States. Then after all of this hard work to have his or her competition down the street destroy their lives.

I would also ask you to make an educated vote. A vote that would not be cast solely on what has been said here today. But find out why certain individuals have stood before you and disrespected you by telling you things that are not true for their personal gain.

Lastly think about the example you will be setting not only for the other Boards but all citizens in the state. I feel that by supporting this bill you are telling not only the adults of this state but children that it is OK to lie, deceive to use money and power and any possible means you can use to destroy someone's life for personal gain.

All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident."

Schopenhauer

"Those who cannot remember history are condemned to repeat it."

Santayana

In 19th Century Vienna Dr. Ignaz Semmelweis was humiliated for proposing that handwashing could save lives. The bias he suffered we now now address with due process. We seek a Medical RICO Act to permit our profession to respect due process in the public interest.

A history of the Semmelweis Society by Dr. Waite follows:

10 July 1993

Dear Colleagues,

The evidence that medical peer review is abused is overwhelming. my belief is that it is the natural consequence of giving the peer review immunity in the face of great competition for medical business. Doctors by nature are competitive, egotistical, and often arrogant. This assemblage of physicians has many doctors who have gone through two or more training periods before you could get your license to practice medicine in this country. Many are thus extremely well qualified and more skilled than the doctors who grew up and trained in this country. If you are sympathetic and willing to listen and to work hard you are the worst kind of competition, one that is more skilled than I am. You generate a fear that I will lose business to you. Often my worst fears are realized and you do just that. The citizens like your care.

How does an established physician in the community deal with this threat? All too often the easy, quick, and elegant way to get you out of my turf is to use medical peer review. Many of you came to this country with the concept it has laws that give you a right to an impartial, just hearing on disputes. We have a model Constitution the envy of many societies. We have a Bill of Rights

like a few other countries do.

The rampant abuse of medical peer review, with its immunity, then is used against you and its devastation is complete, you are powerless to fight it and I hear "but this is America" it can't happen here. !!!

What does happen? While your accusers select the judge, or hearing officer, and they put their friends on the jury. Hearsay evidence is allowed. Hence any unsubstantiated evidence is admissible, and often sought out in large volume to increase the cost of defending against trivial charges, untrue charges, and illogical charges all with the plan of bankrupting you. The verdict is in before the hearing ever begins. The process is semi-judicial, thus you have no subpoena power, you have no right to compare your results to the other doctors on the staff. After all you are on trial, they are not. Secret documents that come from the quality assurance committees etc. will be seen for the first time. The charges to defend against are vague often. How do you fight shadows? Now during the deliberation phase after the trial the local doctors do not have to limit their consideration to just the evidence heard during the hearing. Since they all know, you or have heard of you, many charges or concerns they have will be considered, even though you do not know about them.

This is a kangaroo court.

This is immune at the insistence of the AMA and established doctors. Their self interest are often overwhelming. They usually feel it will never happen to them. It will not as long as they are on the committees.

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SUITE 205
DOWNEY, CALIFORNIA 90241
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FAX (213) 862-2451

The now president of the AMA, John Clowes, can be heard on a commercial tape, acknowledging more than 80% of medical peer

review is done for economic reasons. Still the AMA and organized medicine at the state levels have indicated no desire to change the system or remove the immunity. It is up to the outraged victims of this system to change it by vigorous action of our own. No one is going to do it for you. The lawmakers can change it by mandating outside doctors to sit in judgment, not the local doctors. In exchange for an unbiased jury we will give up our right to sue. The right to sue is an illusion for most of us for we do not have \$500,000.00 to go to Federal Court. In Federal Court there is no immunity. If you get before a jury with the type of activity that occurs in medical peer review you may well win. This will be after five years of great anguish and a ruined reputation.

The idea of a data bank on peer review abuses appeals to me. However the data accumulated must be factual and not lead to the ruination of honest peer reviewers. Some honest peers do exist.

I believe the problem can be solved. Those who have suffered a medical peer review have little to lose. It will not go away if we do not become angry activists. Pressure from this organization, the Union of American Physicians and Dentist, The Association of Physicians and Surgeons, and The American College of Legal Medicine can probably be obtained. They are of the opinion the process is a deadly wrong. Elective representatives in this country are all too often the pawns of groups who give them the most money to get reelected. They should be actively lobbied even so.

I wish the Semmelweis Society to go out of business. Until it is not needed we are doing what we can to combat this problem. I have testified on the problem and will do so. I think this process can not stand vigorous exposure. Logically we should be able to get the Bill of Rights, the 6th Amendment for doctors.

Thank you.

Verner S. Waite MD FACS
Executive Secretary, Semmelweis Society

b. List of items and concepts to mention to Sacramento Committee on peer review.

There is abuse of the peer review process occurring on a large scale in California

The exact reverse of the intent of peer review laws is occurring. Politically entrenched incompetents are destroying enlightened competitors.

Hospitals are regularly using peer review to punish whistle blowers who expose policies not in the public interest, for economic reasons, not bad medicine.

There is an abundance of instances where economic motives are obviously at play in peer review, and a paucity of instances where "bad medicine" was the reason for the peer review. We have repeatedly requested information on the frequency of "good faith" peer review and have had no response from AMA, CMA, JCAHO, and CLM. We strongly suspect there is NO data on this, only assumptions.

Doctors are not trained to do peer review. We are accustomed to decision by fiat. "My way is the only acceptable way" Peer reviews are regularly begun with pure fictional charges. It is as if doctors had never heard of the scientific method.

A lawyer skilled in searching for the truth is therefore absolutely essential.

Specific written charges are critical so the fiction can be seen, and thus combated and not conveniently changed.

Destruction by delay is an effective weapon. Time constraints must be inserted to stop keeping the accused from simply withering away. Recall it takes five years to get into court after all hospital remedies are exhausted.

False accusations should be apologized for in public once discovered. Slander is still effective in destroying anyone's reputation. A doctor's reputation is his most valuable asset.

The access to the courts is quite limited, there is a "rule of non review" of medical matters. Assuming doctors are honest is

contrary to medical history

The public's right to good medical care should not be jeopardized by continuing to allow monopolies of the entrenched incompetents to destroy competitors. Free enterprise in medical care would reduce the costs if hospitals can be made to compete fairly and unfair practices exposed, and thus change encouraged, now the voices for change are eliminated by "bad faith" peer review.

SEMMELWEIS hopes to present ways to avoid the web of entrapment in abuse.

"Scepticism is the chastity of the intellect, and it is shameful to surrender it too soon or to the first comer: There is nobility in preserving it coolly and proudly through long youth, until at last, in the ripeness of instinct and discretion, it can be safely exchanged for fidelity and happiness." George Santayana, Scepticism and Animal Faith, IX

Honorable Richard A. Gadbois
Judge, Central District Court
Santa Barbara, California

Dear Judge Gadbois,

8221 EAST THIRD STREET
SUITE 205
DOWNEY, CALIFORNIA 90241 IV
(213) 632-7105 e (213) W2-59M 14 January 1991

I wish to make you aware of the nearly total dishonesty of medical peer review.

There appears to be an assumption that medical doctors, and hospital boards of trustees are inherently honest. After five years of gathering data we can conservatively conclude that 90% of medical peer review is done for only economic reasons. An honest peer review is a true rarity. This is quite consistent with the long history of medicine. It is confirmed by the record of what was suffered by Lister, Pasteur, Semmelweis, Galen, and on and on.

What has changed recently is the immunity granted medical peer review. Now one may have a kangaroo court with no fear of restraint. Hospitals have been placed above the law. The courts use the "substantial evidence rule" rather than an "independent judgment rule" to evaluate the evidence. We can demonstrate that substantial evidence is whatever lies one wishes to put on paper.

Hospital bylaws are uniform in the corrective action section in stating, "this is a semi-judicial proceeding, and the rules evidence do not apply". Physicians have essentially no rights that they would be entitled to if they were caught selling heroin. An adverse peer review presently means you will never again have hospital privileges. HMOs will not have you, you will not be able to obtain malpractice insurance. It has serious effects.

There would seem to be a major flaw in a system where envious colleagues can manufacture ludicrous lies and destroy the most skilled and compassionate physician on the staff. This is precisely what is occurring. The main offense is this individual is the busiest physician in that department. Incompetent doctors are no economic threat and rarely a peer review subject. Incompetents who refer to those in power are certainly not subject to review.

Medical peer review needs to be done on an objective data driven basis. It has not developed beyond the stage of the "good ole boys" maintaining their monopoly. The courts, unfortunately maintain the noncompetitive system, thus prices do not come down, new physicians can not come into the area. All rather cozy.

Years ago Santa Barbara drove out the premier heart transplant surgeon as a totally incompetent surgeon. Not a rare story, and not in the best interest of the people of Santa Barbara.

Yours truly,

Verner S. Waite MD FACS
Executive secretary, Semmelweis Society

QUESTION/ANSWER SESSION
SAN FRANCISCO - October 5, 1990

w/ John Lee Clowe M.D.

Chief of the House of Delegates
American Medical Association

Available on commercial

tape

-|- ~-

AMA President in
1993

DR. VERNER S. WAITE: I am Dr. Waite. my question is to
Dr. Clowe.

If the AMA has been found to have released a
master
with its immunity provision, that you have
insisted
upon, is the AMA willing to rein the monster
in.-

JOHN L. CLOWE: That's a very good question. Yes, we are.

DR. WAITE: What kind of evidence does it take for you to realize
that there is a monster. We have heard speaker after speaker, here
today, refer to this. I'll be saying the same thing. What kind of
evidence does the AMA need to rein this monster in?

R. CLOWE: I don't know how to answer that. Give me an example.

R. WAITE: 10,000 physicians in the United States destroyed
maliciously by their competitors. 10,000 Patrick cases, purely
malicious. Economic. only 100 cases found to be true honest peer
review. Nowr what do you do?

R. CLOWE: You have put me on the spot.

R. WAITE: It doesn't seem like much of a spot. Could you consider reining the monster in under those circumstances?

R. CLOWE: I tell you what I will do. That is a very interesting point that hasn't been pushed very far.

R. WAITE: I have pushed it for four years to the AMA.

R. CLOWE: And it has not gotten anywhere at the AMA, as you know.

R. WAITE: Of course not. They keep insisting on immunity.

R. CLOWE: Yeah. But I will bring it back into our meeting and see if I can get an answer for you. And, I will get back to you.

R. WAITE: Like the lawyers' hypothetical question, those figures are not hypothetical.

CLOWE: I know they are not. You are absolutely right. And I will see what we can do about why 'the AMA has dragged their foot on this. I have no idea.

Scepticism is the chastity of the intellect, and it is shameful to surrender it too soon or to the first comer: There is nobility in preserving it coolly and proudly through long youth, until at last, in the ripeness of instinct and discretion, it can be safely exchanged for fidelity and happiness. George Santayana, Scepticism and Animal Faith, IX

Madam Chair and Committee Members:

My name is Dr. Brian Gale. My address is 2418 Coolidge Avenue in Bismarck. I am testifying against House Bill 1377 because it is not in the best interest of the Podiatrists in the State of North Dakota or the people of this state. The purpose of this bill is to create more medical RICO (racketeering) that has unfortunately been going on since 1986 when peer review was given immunity by Congress. The American Medical Association has made a statement in agreement with studies that have been done showing that approximately 90% of peer review is for economical reasons; doctors using the peer review immunity laws to destroy their competitors. Make no mistake, my problems are not an isolated incident in this state or around the country.

Dr. John McCord, the President of the Federation of Podiatric Medical Boards, which oversees the Podiatry Boards around the United States, wrote an article in a magazine published in January of this year. In it he outlines the usual steps that are followed for all Podiatry Boards. Many of these steps are not being followed by the North Dakota Podiatry Board. Of the steps not being followed the most important one is that all Boards make an effort to settle with the Doctor before proceeding to a formal hearing. I have asked to have the ND Podiatry Board consider settling the complaints against me every year for the past 8 years. They have never been willing to consider settlement. This single fact alone convinces many people that this Board is corrupt.

Management of licensing fees so the Board stays solvent is not only part of the Board member's responsibility but it's also the responsibility of the Board's attorney. In this case Aaron Olson, the Board's President for approximately 19 of the past 23 years along with the Board's attorney, Gary Thune have decided to spend all of the Board's money to destroy me because I am more extensively trained to treat foot and ankle problems.

As Gary Thune told someone recently, "the Podiatry Board situation is a mess". Well who do we have to thank for making it a mess? This Board is corrupt and should be investigated by the Attorney General's office. Will that happen? I doubt it. Should the Board members all be changed? Without a doubt.

There have been 25 complaints sent to the Board against me over the past 7-8 years. Of those 22 are from local competitors or patients that they were seeing. Amazingly, of the two local orthopedic groups one of them has sent approximately ten of those complaints in against me and the other orthopedic group has sent none! Of the five complaints that I was disciplined for one year ago, two of those patients had excellent results and the other three I treated only because no one else would consider trying to help them after they developed complications from someone else's treatment. Two of those three complications were from Aaron Olson and the third was from a local orthoped.

This "game" that Aaron Olson has been playing involves you people as well. Administrative Law Judge Robert Brady said in a hearing involving evidence in a case from the Board against me "the Board has, interestingly, attempted to expand the scope of practice of "podiatric medicine" through an administrative rule..." He goes on to say that "Dr. Aaron Olson appeared and testified, among other things, that "the bill doesn't change anything that is not currently being done." Judge Brady then states, "Either this is an erroneous or incomplete summary of what Dr. Olson, in fact, represented to the committee or it is evidence that it was not the intent of the sponsors of that bill to expand the scope of practice".. Judge Brady goes on to also say that Dr. Olson's statement may have been a deliberate misrepresentation. He also states that "both the Medical Association and the legislature were not dealt with in good faith".

That was in 1991. In 1997 Olson once again tried to deceive the Legislative Session by manipulating an increase in our licensing fee from \$200 to \$500. Although the majority of Podiatrists didn't know that he was attempting to do this, when they found out we were adamantly against it. Somehow though, he managed to get that increase in the licensing fee completed.

Now we're here again and there is more opposition than ever because the Podiatrists in this state are sick and tired of Olson pushing us all around. We have several letters from Podiatrists in this state opposing this bill. However what you don't see is why several of them support this bill. Olson has been contacting most of

the Podiatrists individually and slandering me and intimidating them into supporting it. If the Board president called you and you knew what he has been doing to me and other Podiatrists in the state wouldn't you do whatever he tells you to do? The Board members have been saying that the Board will go bankrupt and then all of the Podiatrists in the state might lose their licenses. They have also said that if they get this money and use \$50-100,000 the Board will then ask for debt forgiveness so the Podiatrists won't have to repay it. Gary Thune and Aaron Olson have convinced the House of Representatives that if the Board doesn't get this money the Board will be able to sue the State of North Dakota. That isn't possible and even if it was it wouldn't happen. There is also no chance of the Podiatry Board filing for bankruptcy. They would not be forced into bankruptcy by Gary Thune's office or the Attorney General's office because they wouldn't get any money if that happened. Any way you look at this, if 1377 is passed, the tax payers of North Dakota lose because they will be the one's paying for Gary Thune's legal fees to destroy me and anyone else Olson wants to get rid of in North Dakota.

The Board is making me pay for the current debt they have which is roughly \$20,000, however I haven't been told how much I have to pay even though the discipline was over a year ago. So there isn't any "emergency". It's just another tact to try to mislead and deceive people like yourselves into doing what a few people want you to do for their own self-serving reasons.

Aaron Olson has talked patients into suing Podiatrists and he has slandered and lied about every Podiatrist in this state. Olson was found to be 41% responsible for a patient's death by a jury in a medical malpractice case yet the Board took only two months to decide that his medical care was appropriate. I haven't killed anyone. In fact none of the patients I was disciplined for last year sued me and none of them have filed for any type of medical disability. After the disciplinary meeting on January 27th last year I left the meeting and my attorney looked at me and said, "this is what people get murdered over". He was referring to the corrupt way that the Board members changed the complaints and never used either of the expert witnesses opinions in coming to any conclusions and reasons for disciplining me.

I understand that this committee is not going to fix all of the problems with this Board however, there are some things that can be done that would go a long way to begin straightening out the serious problems in hand. First of all the current Board members should be changed immediately. The replacements should be chosen from nominations made by the State Podiatry Association or at least a meeting of all Podiatrists in the state who are interested in attending.

Next there should be a conflict of interest statement which specifically states that local competitors can not sit in judgment of each other. Maybe a task force can be formed to look into the Board problem in North Dakota to report to the Governor what can be done to make the unfairness corrected.

The American Podiatric Medical Association is the largest organization of Podiatrists comprised of approximately 10,000 members. This association has begun an investigation into the unethical activities of the individual Board members of the North Dakota Podiatry Board. There have been several hundred letters sent to the Governor's office asking for an investigation into the Podiatry Board and supporting me. There have been over one hundred Podiatrists nationwide who have reviewed the public records I have posted on the Internet at the web site, www.briangale.com. Everyone who reads these records have come to the same conclusion: the Podiatry Board is acting unethically and without any sense of fairness or due process.

The courts are not perfect. Recently 96 inmates on death row were released and proven innocent due to DNA testing. There must be a way for the truth to come out and for these individuals to be stopped.

Thank you. I would be glad to take any questions at this time.

Madame Chair and Committee Members:

My name is Francisco Tello. I was born and raised here in Bismarck, and have been practicing Podiatry here since 1995. For two and a half years I was an associate working with Dr. Brian Gale. For the past three years I have been employed by MedCenter One.

In relation to today's proceedings the North Dakota Board of Podiatric Examiners again wishes to have legislation passed giving them unlimited funds to pursue further legal action against essentially one podiatrist in the State. I have witnessed a grave injustice with regard to this Board's prejudicial mishandling of complaints. Pursuant to this action I have witnessed the original sum of \$20,000 collected from over forty years of licensing fees dwindle to zero in less than twelve months during 1994-1995. Additionally, in 1997 the President of the Board gave testimony before the Human Services Committee regarding Senate Bill 2068. He outlined the financial decline of the Board concluding with a legal debt of roughly \$16,000.

In order to defray these costs the licensure fees were raised from \$200.00 to \$500.00 per year. I gave testimony then, and reiterate now, that these increases in licensure fees will only serve to fuel the continued legal battle between the Board and essentially one North Dakota podiatrist, serving only to throw good money after bad. The fee increase to \$500.00 succeeded in increasing the Board's legal debt to the present level in excess of \$25,000.00. Currently the Board's wish is to raise Podiatric Licensure fees to \$750.00 per annum. This would be one of the highest fees in the nation.

Madam Chair, Committee Members, this will not raise enough revenue to pay the conservative estimates presented by Gary Thune on 2/15/2001 before the House Committee within the original ten year term of the loan. The Engrossed Bill #1377 removes the ten-year term. It also removed any interest charged on monies borrowed. Apparently the Board feels they are entitled to "free money." Does this loan continue ad infinitum?

The podiatrists of our State are more than willing to pay an increased fee to repay present legal debt. However, to continue to accrue debt by throwing good money after bad is absurd!

To pass this Bill will set a questionable precedence by allowing all State Boards the opportunity to borrow funds from the State to offset accrued legal and other debt if it exceeds the revenue generated by licensing fees. One has only to look at the Audiology Board.

The only people who benefit from continued litigation are the respective parties' attorneys. The combined legal costs are now pushing \$750,000.00. Do they need more? If this bill passes the combined total will easily pass the \$1,000,000.00 mark.

Several proponents of this bill will retire long before this debt is repaid. It will lie on our backs, we the podiatrists who oppose this bill to repay the debt. How convenient. To receive free monies and have others repay it. Many podiatrists of our state wish this travesty to cease. Several of their letters are presented here today.

Madam Chair, Committee Members, I respectfully ask; Why are we here today discussing essentially the same Bill that was initially given a "Do not pass" by a twelve-to-three margin on 2/15/2001 in the House Human Services Committee?

Abraham Lincoln wrote, "To sin by silence when they should protest makes cowards of men." Madam Chair, Committee Members, **THIS BILL IS WRONG!** And myself and the other podiatrists of our state whose letters are submitted, **AGAIN** respectfully ask a "Do not pass" for House Bill #1377.

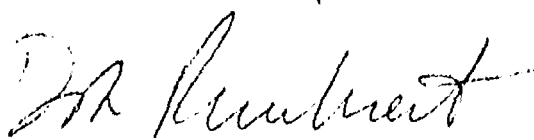
March 14, 2001

Re: House Bill 1377 - First Engrossment

Having read the above Bill it is my understanding that passage of 1377 would allow the North Dakota Podiatry Board to accrue debt, which in turn would allow the Board to continue to function as a Podiatric governing body. While I am entirely in support of this concept I do NOT endorse Bill #1377 due to the fact that no apparent limits on the amount of debt to be accrued exist and no apparent proposal for repayment exists either.

Podiatry is a medical art and science distinct from any other medical specialty. As such we should, and indeed need to be represented and governed by a nonbiased board of our peers. As a practicing podiatrist in North Dakota I believe it to be imperative that the Board resolve its legal issues as equitably and precipitously as possible. I do not believe this includes uncapped legal spending however.

Thank you.



Karen M. Rinehart, D.P.M.
P. O. Box 2655
Bismarck, ND 58502

MARCH 5, 2001

AARON C. OLSON D.P.M.
PRESIDENT NORTH DAKOTA PODIATRIC MEDICAL ASSOCIATION
525 NORTH 9TH STREET
BISMARCK, ND 58501

Dear Dr. Olson:

The work the Board has been involved in over the past few years has been frustrating, not only to its members, I'm sure, but the entire association and of course, myself, as well.

There still seems to be a number of unanswered questions and unfortunately, a number of suspicions. I think for me the most difficult task is trying to understand the entire mechanics of what has been going on. I feel uncomfortable with what this situation may bring. There seems to be no known limit of how much money can and will be borrowed. I don't feel I understand the repercussions that this may all have.

Therefore, it is difficult for me to support Bill 1377 one way or the other. Even though I am undecided, I do want to show my support that I feel the Board needs to keep its autonomy and have a means of paying for its responsibilities. I also feel that we need to be able to have a means of keeping legal representation and to continue doing appropriate investigations and disciplines that are necessary.

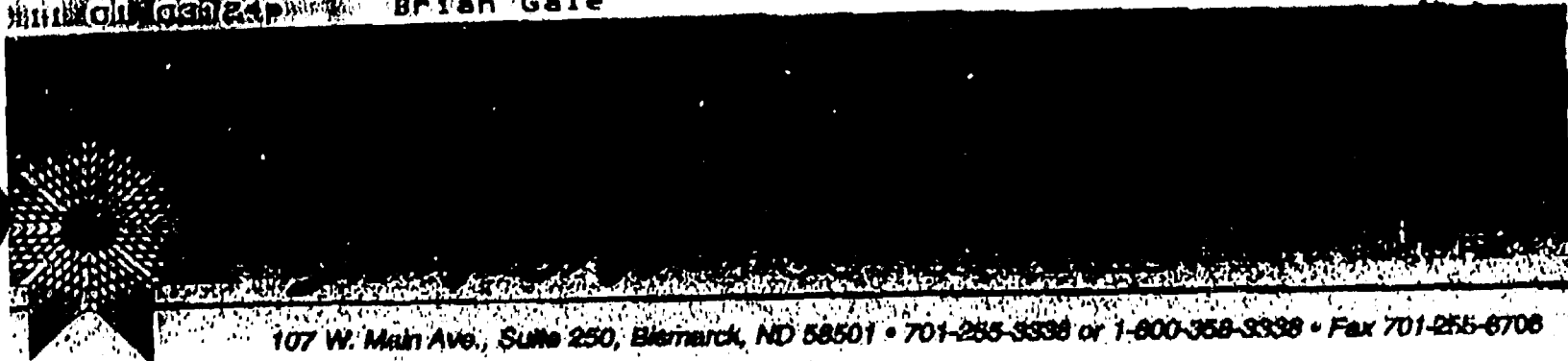
Dr. Olson
March 5, 2001
Page 2

I do hope that the items that have brought this all about with the unusual requests to the legislature for permission to borrow money may come to a speedy resolution, as it is hurting the entire North Dakota Podiatric profession.

Sincerely yours in podiatric medicine,

Steven C. Kilwein, D.P.M.
West River Health Clinics

SCK/11b



107 W. Main Ave., Suite 250, Bismarck, ND 58501 • 701-255-3338 or 1-800-358-3338 • Fax 701-255-6706

Madam Chair and Committee Members:

I am strongly opposed to HB 1377. The current Podiatry Board is corrupt. Some of the members of the Podiatry Board have been intimidating and misleading and deceiving Podiatrists in North Dakota into believing that if they don't support this bill the Podiatrists will lose their licenses.

Some of the Podiatry Board members have been saying the Board may have to file bankruptcy if they are not given money to continue on. This is incorrect. The Board would not be forced into bankruptcy by anyone and there is enough money coming into the Board each year to pay for expenses.

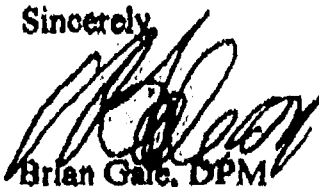
Aaron Olson and Gary Thune are on a crusade to be given unlimited funds for the Podiatry Board for self serving purposes. Olson wants to be able to destroy his local competitors and Thune wants to be able to be paid for an unlimited amount of work that he will do for Olson if this bill passes.

The Podiatry Board should be investigated by the Attorney General's office and all of the Podiatry Board members should be changed as well as the Board's lawyer. If this were to be done all of the "problems" the Board currently faces would go away.

The American Podiatric Medical Association is investigating the members of the North Dakota Podiatry Board for unethical activities.

Thank you for your hard work and time you put into the Legislative Session.

Sincerely,


Brian Gale, DPM

Diplomate, American Board of Podiatric Surgery
Fellow, American College of Foot & Ankle Surgeons
Foot & Ankle Reconstructive & Fracture Surgery
www.dakotafootankle.com



DR. MICHAEL LAPAN

PODIATRIST • FOOT & ANKLE SPECIALIST

211 14th AVE S.W., SUITE 103
SILVER, MONTANA 59243
(406) 482-7555
(800) 331-7575

9 Mar 01
To Whom It May Concern,
I am opposed to Bill
1377 as it stands

Michael Lapan

FELLOW, AMERICAN COLLEGE OF FOOT AND ANKLE SURGEONS
FELLOW, AMERICAN COLLEGE OF FOOT AND ANKLE ORTHOPEDICS AND MEDICINE

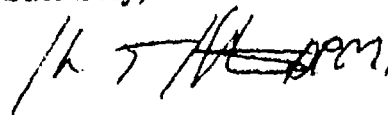
Kevin J. Koester, DPM, AACFAS
Bone, Spine, and Sports Center
225 N7th St.
Bismarck, ND 58501

Dear Members of the Senate,

I would like to go on record as against bill 1377. There are two reasons for my opposition. One, there is no stated limit to the amount of money that the Board of Podiatry can borrow; this is very disturbing to me. Two, I believe the goal of this bill is to solve the financial problem of the board, I fear it will not. The approach of raising Licensing fees was attempted 4 years ago and failed, unless court fees can be stopped from accumulating, it will fail again.

Please vote not to pass this potentially dangerous Bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. J. Koester', written in a cursive style.

Kevin J. Koester, DPM, AACFAS

March 7, 2001

DICKINSON FOOT & ANKLE CLINIC

Cherian Mathew, D.P.M.
2215 Sims
Dickinson, ND 58601
(701) 483-6986

Government and Veterans Affairs Committee
North Dakota Senate
State Capitol
Bismarck, ND 58501

RE: Bill 1377 granting permission to the Board of Podiatric Medicine
to borrow money.

Dear Senators:

This house bill was brought to the Senate for action as an emergency bill.

The North Dakota Podiatry Board has been investigating a podiatrist during the past several years. They have depleted the funds and now they are in debt. The amount of debt I believe is about 25,000 dollars. The defendant doctor is ordered to pay the cost of the investigation and he is making monthly payments. The present annual license renewal fee, 500 dollars (one of the highest in the country, if not the highest) brings 9,000 dollars annually. I feel that the board should be able to pay off this debt in a matter of two or three years. I am concerned that this bill would allow the board to borrow unlimited amount of dollars (hundred of thousands) and get deeper in debt. This bill has no dollar figures as to what the maximum they can borrow. This is going to give them a line of credit to borrow without any limit.

I have met the defendant podiatrist only once and that was when he first came to North Dakota. Since that time I have never had any professional or social contact with him. I am not a friend of this doctor and I am not trying to defend him. I am not familiar with all the charges brought against him. One thing I do know is that the experts who reviewed the charts could not agree whether the charges against him are valid. This man is fighting for his professional life.

During the past three decades, in my contacts with people as a teacher (college), priest (Episcopal Church) and as a podiatrist, I have learned that we humans will do almost anything to prove that we are right. The board members feel that they are right and it will be difficult for them to back off from their thinking. It will be impossible for the present board to deal with this conflict in an unbiased manner. I feel that they should step aside so that a new board made up of people who are not involved in this conflict may have a fresh outlook on the matter. Until that happens no more money should be made available to add fuel to this conflict.

Sincerely,



Cherian Mathew, D.P.M., S.T.M.

March 9, 2001

Francisco Tello, DPM
225 N. 7th St.
Bismarck, ND 58501

RE: Bill 1377

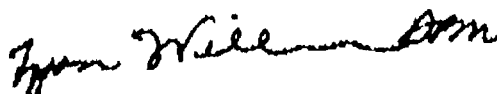
Dear Dr. Tello:

As it now stands, I am not in favor of bill 1377.

I have reviewed the new version of this bill and I continue to have the same problem as before. The extent of indebtedness that the board could acquire is unlimited. Back and forth litigation could plunge the board into so much debt that we could be required to pay unreasonable license fees for decades to come.

I do agree that the NDPMA needs to be able to borrow funds to continue its functions. I could support this bill if there were some mention of a reasonable borrowing limitation. It would also seem appropriate to have the State's Attorney Office take over the cases that cause the board undue financial burden, or in cases of conflicting interests between podiatrists.

Respectfully,



Tyson Williams, DPM

TW/jw

Co: Brad McCusker, DPM
Aaron Olson, DPM

1-29-01 MON 1:25 PM DR. TYSON WILLIAMS

FAX NO. 701857356694

P. 2

01/29/01 09:58 FAX
01/29/01 09:17 FAX 781 222 6226CANON 8840
FAX 1001 CLINIC202
02

NORTH DAKOTA BOARD OF PODIATRIC MEDICINE

January 26, 2001

Dr. Brad McCusker
President ND Podiatric Medical Assoc.
400 Burdick Expy E.
Minot, ND 58702

RE: Board Activities

Dear Brad,

As I had indicated in our multiple phone conversations, I would send you a synopsis of our conversations for dissemination to the Association.

As most of us know, last Tuesday there was a hearing on house bill 12-62 which at face value would have merged the practice of podiatry under the asbestos of the Board of Medical Examiners. Testimony was presented with an overwhelming opposition to this bill with the exception of Brian Gale who spoke in favor of the dissolution of Century Code 43-05. The committee did a hog house amendment to the original bill. This essentially got rid of the original bill and allowed them to make amendments to Century Code 43-05. These amendments, which are supported by the Board of Podiatric Medical Examiners, include no more than 2 successive appointive terms of office with a 2 year interim period, the addition of a lay member of the Board, as well as stiffer penalties to recover costs of discipline.

After multiple conversations with the Attorney General's Office and Legislatures and Legislative council, House bill 13-77 was submitted. Essentially, this bill if passed will allow the Board of Podiatric Medical Examiners to acquire debt. This gives us some protection and autonomy as a Board and allows us to fulfill our obligations to the Century Code. It also will open avenues for additional funding should a crisis situation occur. Because of our low numbers of licensees, there is the possible increase of license renewal fees to \$750. While this is rather extreme, the original requirement was \$1,000 license renewal fee. In all things with the Legislative process, negotiation and compromise sometimes helps. From a personal stand point, I hope we never have to utilize this. While at face value this bill may seem unpalatable to most of the profession, I would respectfully request we all support this bill. Because of the controversy and fire storm that has

did not
support ①

possible?
bull shit?

what kind?
financial?

who set
original?

JAN-29-01 MON 1:26 PM DR. TYSON WILLIAMS

FAX NO. 701857356694

P. 3

01/29/01 09:59 FAX 701 222 0220

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0203

been created in the Legislature over the last few years, my perception of internal discord will put any positive Legislation at risk and return us to the possibility of dissolution of our profession.

Other activities as a Board have included the option to use PM License ^(in place of formal practical and testing for license). The oral practical will essentially be changed to a review of the rules and regulations affecting the practice of Podiatry in NID. We have discussed 2 year renewal of licenses, expanding individual study in continual education, inactive licenses, reduce license fee for non-practicing doctors. Currently we do not have enough money to accomplish the latter modifications, however, these do not need to be addressed Legislatively and can be handled with the Administrative Rules Process. While cumbersome and a bit expensive, we hopefully can get this done within a reasonable period of time once our financial situation stabilizes.

On behalf of the Board, I would like to request as well as remind all Podiatrists to feel free to contact any or all Board Members personally or through you or Dr. Tyson with any questions they may have. It is not an excuse, merely a reality that our Board members have 4,000 unpaid hours on behalf of the profession. Most of these hours were very stressful, unrewarding activity. Many of our problems need to be dealt with rapidly and decisions need to be made within hours. Our Boards Attorney, Gary Thune, has done an admirable job dealing with the Legislative process and educating the various Legislators to our plight. He has done this exceedingly without pay and when billed have been billed at less than the going rate. Should you have opportunity to run into him or have dealings with him, a thank you and expression of a job well done would be appreciated and appropriate.

Sincerely,

Aaron C. Olson, DPM
President of Board

01-29-01/jjp

Original to follow

Aaron C. Olson

July 1975 - June 1976 Ohio College of Podiatric Medicine, Cleveland, Ohio First Year Resident. Rotation as Follows:

Dayview - Osteopathic Hospital Internal medicine, Emergency Room, General and Podiatric Surgery, Anesthesiology.
Women's General Hospital Admitting, General Medicine, General and Podiatric Surgery, Anesthesiology.
Cleveland Clinic Foundation Research Department, PVO, Simulation.
Ohio College of Podiatric Medicine General Patient care, Teaching and Supervision of 3rd and 4th year students.

FILIACTIONS

OFFICES HELD

North Dakota Podiatry Association, 1975 - present President, 1976 - 1985

North Dakota Board of Podiatry Examiners, 1978 - present President, 1981 - 1987

North Dakota Diabetes Association, Board of Directors 1978 - present State Fund Raising Chairman 1983 - 1984

North Dakota American Red Cross, Board of Directors, 1978 - 1984

North Dakota Continuing Health Education Resource Center, Board of Directors, 1977 - 1981 Treasurer 1979 - 1980

American Public Health Association, 1976 - present State Delegate National Meeting 1978 - 1983

American Podiatry Association, 1975 - present State Delegate, National Meeting 1978 - present

American Podiatry Medical Association National Fraud and Abuse Committee 1977 - present

Starline, 1977 - 1982

WKS, 1968 - present

Ismarck Early Childhood Education Program, 1977 - 1985 Health Advisory Committee

Fifty-seventh
Legislative Assembly
of North Dakota

Re **ENGROSSED HOUSE BILL NO. 1377**

Introduced by
Representatives Keiser, Berg, M. Klein

1 A BILL for an Act to create and enact a new section to chapter 43-05 of the
2 North Dakota Century Code, relating to the authority of the board of podiatric
3 medicine to borrow funds; to provide for a legislative council study; and to
4 declare an emergency.

5
6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7
8 **SECTION 1.** A new section to chapter 43-05 of the North Dakota Century
9 Code is created and enacted as follows:

10
11 **Loan for litigation expenses.** Subject to approval by the emergency
12 commission, the board may borrow funds sufficient to pay for attorneys' fees
13 and costs incurred in investigations, administrative proceedings, and litigation
14 resulting from the board performing its duties. Notwithstanding section 43-05-
15 15, the board may establish an annual renewal license fee for each year
16 following the issuance of a loan under this section, and the fee must be
17 maintained until the loan is fully repaid, including any accrued interest. The
18 amount of the annual renewal license fee assessed under this section may not
19 exceed the greater of one thousand dollars or an amount necessary to repay
20 the loan within three years after the loan is issued. Once the loan is paid in full,
21 the annual renewal license fee must revert to the amount established by the
22 board before the issuance of the loan. The notice of a proposed rulemaking to
23 assess the fee in this section or revert to the previous license fee may be sent
24 by certified mail to each individual licensed by the board in lieu of the
25 publication requirements for the notice in chapter 28-32.

26

27 **SECTION 2. LEGISLATIVE COUNCIL STUDY.** The legislative council
28 shall consider studying the ability of occupational and professional
29 boards with less than 100 licensees to process disciplinary complaints
30 and carry out other statutory responsibilities. The study should address

1 procedures used by boards to respond to disciplinary complaints and
2 initiate disciplinary actions, the boards' ability to pay for the cost of
3 disciplinary actions, and the legal services and staff services available to
4 assist boards with the processing of disciplinary complaints and the
5 performance of other statutory responsibilities.

6

7 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency
8 measure.

9

10 Renumber accordingly.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1377

Page 1, line 2, remove "from"

Page 1, line 3, remove " the Bank of North Dakota" and after the semicolon insert "to provide for a legislative council study; "

Page 1, line 7, replace the first "The" with "Subject to approval by the emergency commission, the"

Page 1, line 7, remove "from the Bank of North Dakota"

Page 1, line 8, remove "or other sources, and the Bank may loan to the board,"

Page 1, line 10, replace "a" with "an"

Page 1, line 11, remove "seven hundred fifty dollar"

Page 1, line 12, after "repaid" insert ", including any accrued interest. The amount of the annual renewal license fee assessed under this section may not exceed the greater of one thousand dollars or an amount necessary to repay the loan within three years after the loan is issued."

Page 1, line 14, after the period insert "The notice of a proposed rulemaking to assess the fee in this section or revert to the previous license fee may be sent by certified mail to each individual licensed by the board in lieu of the publication requirements for the notice in chapter 28-32."

Page 1, after line 14, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the ability of occupational and professional boards with less than 100 licensees to process disciplinary complaints and carry out other statutory responsibilities. The study should address procedures used by boards to respond to disciplinary complaints and initiate disciplinary actions, the boards' ability to pay for the cost of disciplinary actions, and the legal services and staff services available to assist boards with the processing of disciplinary complaints and the performance of other statutory responsibilities."

A certified letter in the mail from an attorney is something you never want to see. However, if you do have a complaint lodged against you, this author offers pertinent tips to make the legal process as painless as possible.

By John H. McCord, DPM

If there's any piece of mail that can ruin your day, it's a certified letter from your state medical quality assurance commission or professional licensing board. This is how most state licensing boards notify doctors that a complaint has been filed against them. The complaint could come from a dissatisfied patient, the state pharmacy board (usually pertaining to a prescription of controlled drugs), or be related to a malpractice settlement against you.

Whatever the source, you need to take these complaints seriously since they can lead to suspension or revocation of your professional license and the end of your medical career.

"You can't know the terrible feeling you get from learning that you are the subject of a licensing board investigation until you've experienced it," explains a pediatrician from a small West Coast community. He learned that he was being investigated for sexual misconduct with a teenage female patient. The complaint was made twenty years after the alleged incident took place.

"It felt like a lynch mob was after me," the doctor recalls. "I had been in practice for just a few years and thought I was careful about boundary issues with my patients. I always had a nurse or the mother in the room while examining female patients and I never did pelvic or breast examinations. When that was needed, I referred them to an OB-GYN specialist. This woman, who is now 35 years old, now remembers that I had tried to rape her. Some psychologist helped her 'recover' her memory of the event. Now I have to convince the medical board and the local

police of my innocence. It's my word against hers and her 'recovered memory' psychologist."

The pediatrician's case is the most difficult situation a doctor can encounter in dealings with the medical licensing board but it's not impossible for a podiatrist to wind up in a similar dilemma. Be aware that complaints that involve sexual misconduct are given the highest priority with licensing and disciplinary boards.

How A Complaint Is Filed

Arlene Robertson, manager of the podiatry program for the Washington State Department of Health, says that the initial complaint goes through an intake and review process and is handled by an administrative assistant. A file is set up and the status of the physician's license is evaluated. A program manager then reviews the file and makes an assessment.

Keep in mind that a lot of complaints never make it any further than this stage. If the complaint is found to be below threshold or outside of jurisdiction, no action is taken. In many of these cases, the doctor never even learns that a complaint was ever made. A typical example is when a patient complains that the doctor was running late and he or she had to wait 45 minutes or that all of the magazines in the waiting room are more than three months old. Believe it or not, these are actual complaints I have reviewed as a board member.

When The Board Proceeds With Further Investigation

However, if the program manager does find that the complaint is

What You Should Know About Getting Legal Advice

Avoiding confrontations with disciplinary boards is certainly a worthwhile goal. However, no matter how careful you are or how hard you try to be a good doctor, you may, one day, be the focus of a board investigation.

According to Tom Fain, a Seattle attorney who specializes in defending medical professionals in disputes with regulatory boards and commissions, it was rare for the disciplinary boards to become involved in malpractice cases in the late 70's and early 80's, but since then, they have become more aggressive. Be aware that many states require the reporting of settled cases.

While it's your option to use an attorney, given the potential consequences of dealing with a disciplinary board, it would be wise to consult a lawyer as soon as you learn that a complaint has been filed against you. You can always decide whether you want to use an attorney after the facts of

significant and within jurisdiction, he or she will forward the complaint to an investigator, who is usually someone with a medical or law enforcement background.

This is usually the point when you would receive that dreaded certified letter, notifying you that a complaint has been made. The letter may also include a request for a copy of the medical record and an explanation from your point of view. At this time, you should decide whether you want to retain an attorney or try to handle it alone. (See "What You Should Know About Getting Legal Advice.")

After the complaint has been investigated or declared to be below threshold, it is passed on to a consulting board member for review. Generally, one of the podiatrist members of the licensing board will function as a reviewing advisor and will not vote on the disposition of the case against you.

The consulting board member reviews documents from both sides and recommends further action or that the case be closed. If he or she recommends further action, a statement of charges is drafted, usually by an assistant attorney general, and is subsequently forwarded to you.

What You Should Know About A STID

If you get this letter, it may include an offer for a settlement conference, which gives you and the board an opportunity to agree on certain facts of the case and establish a stipulation to informal disposition (STID). The STID may include a monetary penalty and requirements for additional continuing education. Be aware that this STID may allow investigators to monitor your practice or possibly lead to a temporary suspension of license.

Entering a STID is a crucial step because then your case becomes public knowledge, possibly even part of the

national practitioners' data bank. Most doctors should consult an attorney before signing this type of agreement.

What The Compliance Order Will Say

If you decline the STID, you must have a formal hearing before the board and a judge from the Office of Professional Standards. After hearing your case, the board goes into closed session, evaluates the evidence presented by both sides and then drafts a final order, which is always publicly disclosed.

The final order lists the violation with references to the state law, the penalty (which may include a monetary fine), and whether your license has been suspended or revoked.

Be aware that compliance orders are also listed and can include continuing education or monitoring of your practice activities. If there has been a substance abuse problem, the compliance order may also include monitoring by your health program. This order will also outline the provisions that need to be met in order to get your license fully reinstated. At this point, you can still appeal.

Also keep in mind that, in my experience as a state licensing board member, it is a long and difficult process to separate a medical professional from his or her license and means of livelihood. The courts tend to frown on permanent revocation of a medical license and frequently stand in the way of such attempts by state boards.

Why You Would Be The Last To Know

In many cases, you only learn that a complaint has been filed, but given the whistleblower laws, you won't always learn the name of the complainant or the nature of the complaint. All too often, you're the last to know when a complaint has been filed against you, according to Tom Fain, a Seattle attorney who specializes in defending medical

professionals in disputes with regulatory boards and commissions.

This was the case with the pediatrician that I mentioned earlier. He had been nominated to an advisory board for the state agency that investigates child abuse. The agency learned that he was under investigation by the medical quality assurance commission while conducting a routine background check. The agency contacted the pediatrician and asked that he withdraw his application for the position. This is how he first heard that a complaint had been filed and that he was under investigation by the medical board and the local police. A year after that, he was notified in writing by the state with the dreaded certified letter.

What you do after being notified of a complaint can profoundly effect the outcome of your case. According to Fain, the first thing you should do is to notify your attorney and your malpractice insurance company. You should let them know the nature of the complaint and the name of the complainant, if you have that information. Proceed to gather the relevant medical records. If the complaint originated from a disgruntled former employee, gather the relevant employment records.

What You Shouldn't Do If The Letter Arrives

Fain also emphasizes that there are things you should not do after learning of a complaint. Never change or alter records in any way. An altered medical record will ruin any chance you have of prevailing in the case.

Also avoid contacting the investigator to try to "talk it out." This will not work. If anything, it will work against you. You should also avoid contacting the complainant to try to talk him or her into dropping the complaint. Likewise, you should not contact the complainant's attorney. Avoid all of these knee-jerk reactions and come to grips with the fact that your license may be at stake.

In my own experience as a state licensing board member, the worst thing you can do is to call members of the state podiatry board to tell your side of the story. By doing this, you will just cause the board member to recuse him- or herself from the case and report the ex-parte communications, a fact that will be added to the statement of charges against you. I still get calls occasionally from podiatrist friends who want me to hear their

How To Avoid Complaints Entirely

Certainly, it is easier to avoid complaints than going through the whole process of a licensing board investigation.

Attorney Tom Fain warns that once a complaint against you is investigated, it is a matter of public record and is nearly impossible to get rid of. Here are some tips Fain offers to help you avoid complaints.

1. Maintain the highest level of competency. Maintain your skills and stay current on the state of your profession.
2. Be caring and compassionate toward your patients (even the obnoxious one). Remember that compassion is one of the reasons you are a doctor.
3. Spend time communicating with your patients. Don't give short thrift to bedside manner.

side of the story before it comes before the board. They end up losing their only friend on the board and generally their cases.

Forget about intimidation. If you're named in a complaint, don't even think about threatening the patient, his or her attorney, the investigator or board members. Keep in mind that the staff of the licensing board has likely heard it all and their resolve has been hardened by time, not to mention the fact that they have the resources of the state behind them. Intimidation simply will not work with state licensing and disciplinary boards.

According to Fain, the board members are going to be your judge and jury, and you'll only end up digging your own grave if you try to intimidate them. If your case does go to trial before the disciplinary board, the last thing you want to have come out in evidence is that you were trying to intimidate the complaining witness into abandoning his or her claim.

Final Notes

Once your case is settled or a judgement goes against you, it does become a matter of public record. This information will end up in the practitioner's data base and will come out every time you try to gain credentials for hospital privileges or apply to participate in an HMO or insurance plan. A bruise on your record becomes permanent. It is nearly impossible to get the records of your case "sealed" or pulled from the databases. Therefore, if you become the target of an investigation, it is important to take the proper steps to defend your good name

Denial of Due Process

The Board further breached its contractual agreement for review and denied Dr. Gale due process in these proceedings as follows:

1. The Board considered matters outside the scope of the First Amended Complaint thereby denying Dr. Gale notice of the issues to be considered.
2. The Board, without notice, considered additional and further evidence outside the record without notice to Dr. Gale.
3. The Board failed to take steps to properly preserve the record by the preparation of an official record of the proceedings and their deliberations resulting in the findings, conclusions and disciplinary action against Dr. Gale.

This denial of due process must be discussed prior to any analyses of the five complaints. Like the standard of care issue set forth above, the denial of due process to Dr. Gale permeates the Board's entire decision. In this brief (section entitled Analysis of the Five Complaint) Dr. Gale sets forth for the Court how in each of the five complaints the Board raises new issues after the record was closed; such conduct by the Board denied Dr. Gale due process of law. The Court in *Devous v Bd. of Medical Examiners*, 845 P.2d 408, 415-417 (Wyo. 1993) found that a disciplinary proceeding before a licensing board is an adversary proceeding and that a licensee has a statutory and constitutional right to notice from the agency and an opportunity to be heard before the agency. Furthermore, that the due process clauses of both the United States Constitution and the Constitution for the State of Wyoming demand these minimal guarantees. The *Devous* decision, at

page 413, citing from an Iowa case, *Cilchrist v Bierring*, 14 N.W.2d 724, 732

(Iowa 1944) stated that:

The cases, from which we have quoted, clearly announce fundamental principles, essential to the life of a free people living under a republican form of government. The right to earn a living is among the greatest of human rights and, when lawfully pursued, cannot be denied. It is the common right of every citizen to engage in any honest employment he may choose, subject only to such reasonable regulations as are necessary for the public good. Due process of law is satisfied only by such safeguards as will adequately protect these fundamental, constitutional rights of the citizen. Where the state confers a license to engage in a profession, trade, or occupation, not inherently inimical to the public welfare, such license becomes a valuable personal right which cannot be denied or abridged in any manner except after due notice and a fair and impartial hearing before an unbiased tribunal. Were this not so, no one would be safe from oppression wherever power may be lodged, one might be easily deprived of important rights with no opportunity to defend against wrongful accusations. This would subvert the most precious rights of the citizen.

Slagle v Wyoming State Bd. of Nursing, 954 P.2d 979, 982-983 (Wyo. 1998) was a case where the Board of Nursing filed a complaint against Slagle and then the Board of Nursing rendered its decision considering (1) an alleged violation of a cease and desist order and (2) allegations that Slagle made false statements on her 1993 application, neither of which were in the complaint filed by the Board. The Wyoming Supreme Court held that the Board failed to give Slagle notice that the Board would consider these two alleged violations as a basis for discipline and such failure to give Slagle notice was unconstitutional. The Wyoming Supreme Court reversed the Board's decision to discipline Slagle. The

Honorable Chairman Lee and Committee Members,

I would like to add a few comments in response to Gary Thune's "boating" he gave me today. This is the third time he has bashed me publicly at hearings in the past few weeks. I have tried to point out the "big picture" and the problems with the board system in North Dakota. Unfortunately, Gary Thune has repeatedly insisted that this is a single person who is unhappy with "fair" discipline. I am not the only person who is a witness of the abuse of power of this Board. I just happen to be the person who has seen the worst of the abuse.

The American Podiatric Medical Association has been in the process of investigating the North Dakota Podiatry Board members for unethical activities in relationship to their actions they have taken against me. To confirm this please contact the APMA headquarters at 301-581-9221.

Werner Strupp is the APMA's attorney.

Gary Thune mentioned that there have been 25 complaints against me over the past 7-8 years. He failed to mention that 22 of those 25 complaints were sent to the Board by direct local competitors or by Aaron Olson himself telling patients to send in complaints against me. If there was a conflict of interest statement and the Board looked at complaints realistically those 22 complaints would have never been looked at twice. In fact they would have never been sent to the Board because the people who submitted them would have known there would be no action taken on them. Olson can hide behind a complaint but his finger prints are on them.

Gary Thune mentioned that they are currently in the process of going forward with formal complaints against me regarding four patients. Of those four patients three were seeing Olson at the time they sent in their complaints. The other was seeing a close friend and previous Board member who has worked to keep Podiatrists out of "his area" for years.

The scenario has been played out repeatedly; the patient is targeted by "Doctor X" and then he convinces the patient that they have a problem that is much more serious than it really is; next he tells them that they have permanent damage and the final icing on the cake is that he tells them that there is nothing that anyone can do for them. Once he has the patient extremely upset about the "permanent damage" that has been done to them, Dr. X, gently steers them in the direction of submitting a complaint to the Board.

We as a society are conditioned to trust and believe what a doctor tells us. Moreover we are conditioned to believe that doctors are ethical and honest and have the patient's best interest in mind at all times. I believe that most doctors follow these rules of ethics but others are overwhelmed with the obsession of having more money and power and will go to extremes to try to pay for their escalating overhead and to increase their revenues since they are being paid less due to the constant insurance cuts that have taken over medicine in general over the past several years.

In response to Gary Thune's statement that I am no different than most criminals, I would like to point out that the legal system in our country is not perfect as Gary Thune seems to want you to believe. For example, 96 inmates on death row were recently allowed out of jail after DNA testing proved their innocence. I have never been allowed to speak on my behalf and to directly answer any questions that the Board members have had concerning my treatment of these patients. There has never been any real due process by this Board. They make up the rules as they go and they have no one to answer to.

In closing, I believe that it's important for you to understand that it is impossible for the local competitors to actually compete with me in a true sense. This is because I have more training than they do. I completed a four year residency program for reconstructive foot and ankle surgery. I was the first person to complete this program in the United States and it's the only program of it's kind anywhere. I was the first of six people in the United States to become board certified in ankle and reconstructive surgery.

These credentials don't come easily. They certainly aren't achieved by being incompetent. There is either something wrong with my residency directors and everyone who gave me the oral and written tests and all the thousands of patients who are extremely satisfied with the care I have given them or this is a SHAM.

The local competitors can't compete with me so they had to find a different way to get rid of me. They saw the writing on the wall. I was beginning to build a huge practice with excellent results and a great reputation. There was no other way to deal with me except to go after me by using the peer review system to attack me. It's nothing new. It's being done everywhere as I stated in my testimony.

Don't forget that the best heart surgeons have the greatest number of patients that die because those doctors are the one's who take on the most difficult cases that no one else is willing to try to help. There is no difference in my situation. I may have some less than perfect results but I would gladly compare my results against anyone else's especially the local competition.

The people of North Dakota are losing in this game. The standard of care stays the same here as it improves everywhere else.

Thank you.

Brian Gale, DPM, FACFAS