

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2141

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2141

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2141

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 17, 2001

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 1 | | x | 3.9 to 27.9 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Douglas P. 103</i> | | | |

Minutes:

The committee was called to order. All members present. The hearing was opened on SB 2141 relating to prescriptive authority of physician assistants.

ROLF P. SLETTEN, Executive Secretary and Treasurer, ND State Board of Medical Examiners, testimony in favor. Written testimony attached. The purpose of this bill is to allow physician assistants to qualify for DEA registration, it will not grant them broader prescribing authority than has been delegated by the supervising physician.

SENATOR D. MATHERN: Will the PA's name appear on the prescription?

R. SLETTEN: Yes.

SENATOR KREBSBACH: Authority from supervising physician written?

R. SLETTEN: Yes a contract filed with our office is required.

SENATOR ESPEGARD: Is the PA responsible for misprescription?

R. SLETTEN: No, rules say supervising physician is responsible for the acts of the PA. The supervising physician can impose more restrictive limitations than the law.

SENATOR MUTCH: What are the qualifications for a DEA license?

R. SLETTEN: To get a PA license ND requires certification by or registration with the National Association of Certification of PAs, they check all educational requirements and make sure they comply with the continued education requirements. They oversee all their qualifications.

SENATOR ESPEGARD: Would DEA registration become a requirement for PAs?

R. SLETTEN: No because some may be in an employment situation that does not require them to prescribe.

R. SLETTEN, Physician Assistant, President ND Association of Physician Assistants. In support of this bill. Written testimony attached.

SENATOR TOLLEFSON: This bill will require registration?

R. SLETTEN: Yes, if they want to prescribe controlled substances they must register.

DENISE LORENZ, PA, Hazen. Written testimony attached. In favor

HOWARD ANDERSON, Executive Director, ND Board of Pharmacists. In favor of this bill. As the law is now the physician has to sign the prescription. This will make it easier for the DEA to keep track of controlled substances and make PAs more directly responsible.

No testimony against. Hearing concluded.

SENATOR KLEIN: Motion: Do Pass. SENATOR D. MATHERN: Second

Roll call vote: 7 yes; 0 no; 0 absent. Carrier: SENATOR D. MATHERN.

Date:

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Senate Industry, Business and Labor

Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By

Seconded

By

[illegible]

Total (Yes) 7

No U

Absent 0

Floor Assignment S. D Mathew

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

REPORT OF STANDING COMMITTEE (410)
January 17, 2001 3:30 p.m.

Module No: SR-07-1147
Carrier: D. Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2141: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2141 was placed on the Eleventh order on the calendar.

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2141

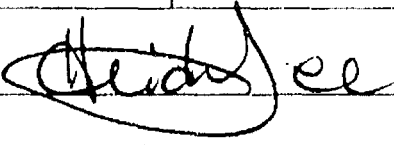
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2141

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Mar. 5, 2001

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1 | X | | 0-25.5 |
| | | | |
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| Committee Clerk Signature  | | | |

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rolf Sletten: *Executive, Sec. and Tres. for State Med. Board* **Written testimony sponsoring bill.**

Rep Froseth: What is schedules three and fou"?

Sletten: Schedule two is narcotics, so it's everything else.

Rep Keiser: How do they write prescriptions?

Sletten: The physician must authorize but signature currently. This is more convienent.

Chairman Berg: How does this change liability?

Sletten: It doesn't change liability because the PA is under the doctors supervision.

Chairman Berg: Does misuse by PA affect the doctor?

Sletten: No, unless misuse is together.

Chairman Berg: Are PA licensed by NDMA?

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2141
Hearing Date Mar. 5, 2001

Sletten: Yes.

Denise Lorenz: *President of ND Academy of PA's* **Written testimony in support of bill.**

Rep Ruby: What is the cost to register with the DEA?

Lorenz: The cost is \$210 every three years but not all PA's will need this.

Rep Forseth: What is the procedure?

Lorenz: It goes through council then a form is filled out.

Rep Koppang: How many PA's are there?

Lorenz: Currently there are 184.

David Pieske: *ND Med. Assoc.* We support this bill.

Chairman Berg: Prescriptions are driving healthcare, there needs to be more looking at side effects and how they would relate to patients history. Do you see this as a concern?

Pieske: We dealt with this in the Interim Committee and we do look at that

Howard Anderson: *Exec. Board of Pharmacy* Except for schedule two there is no direct tracking for perscriptions. Individual tracking is done but not state wide. This provides less work.

Chairman Berg: We'll close the hearing on SB 2141. What are the committees's wishes?

Rep Keiser: I move a do pass.

Rep M. Klein: I second.

12 yea, 0 nay, 3 absent Carrier Rep Ruby

Date: 3-5-01
Roll Call Vote #: 2 /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2141

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Keiser Seconded By M. Klein

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|-----------------------|-----|----|
| Chairman- Rick Berg | ✓ | | Rep. Jim Kasper | ✓ | |
| Vice-Chairman George Keiser | ✓ | | Rep. Matthew M. Klein | ✓ | |
| Rep. Mary Ekstorm | ✓ | | Rep. Myron Koppang | ✓ | |
| Rep. Rod Froelich | ✓ | | Rep. Doug Lemieux | ✓ | |
| Rep. Glen Froseth | ✓ | | Rep. Bill Pietsch | ✓ | |
| Rep. Roxanne Jensen | ✓ | | Rep. Dan Ruby | ✓ | |
| Rep. Nancy Johnson | | | Rep. Dale C. Severson | ✓ | |
| | | | Rep. Elwood Thorpe | ✓ | |
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Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Ruby

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

REPORT OF STANDING COMMITTEE (410)
March 5, 2001 12:38 p.m.

Module No: HR-37-4815
Carrier: Ruby
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2141: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends
DO PASS (12 YEAS, 00 NAYS, 03 ABSENT AND NOT VOTING). SB 2141 was
placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2141

North Dakota State Board of Medical Examiners

ROLF P. SLETTEN
Executive Secretary and Treasurer

LYNETTE LEWIS
Administrative Assistant

TO: CHAIRMAN MUTCH AND THE MEMBERS OF THE SENATE INDUSTRY,
BUSINESS AND LABOR COMMITTEE

FROM: ROLF P. SLETTEN, EXECUTIVE SECRETARY & TREASURER

RE: SENATE BILL NO. 2141

DATE: JANUARY 17, 2001

The heart and soul of physician assistant practice in North Dakota is the close relationship between the physician assistant and the supervising physician. For example, our Administrative Rules specify that:

"It is the responsibility of the supervising physician to direct and review the work, records, and practice of the physician assistant on a daily, continuous basis to ensure that appropriate and safe treatment is rendered. The supervising physician must be available continuously for contact personally or by telephone or radio, and the supervision must include at least eight hours per week of on-site, personal supervision."

The rules also specify that:

"Physician assistants may perform only those duties and responsibilities that are delegated by their supervising physicians. No supervising physician may delegate to a physician assistant any duty or responsibility for which the physician assistant has not been adequately trained. Physician assistants are the agents of their supervising physicians in the performance of all practice-related activities. A physician assistant may provide patient care only in those areas of medical practice where the supervising physician provides patient care."

Under current law a physician assistant may prescribe medications (except Schedule II controlled substances) in the name of the supervising physician if the authority to do so has been assigned to the physician assistant by the supervising physician.

Under this proposal a PA may prescribe medications (except Schedule II controlled substances) in the PA's own name if the authority to do so has been delegated to the PA by the supervising physician.

The purpose of this bill is to allow PA's to qualify for DEA registration.

The specific language that is incorporated here has been drafted by the DEA.

The essential point is that, if this is passed into law, a PA will still not have any broader prescribing authority than has been delegated by the supervising physician.



American Academy of Physician Assistants

950 North Washington Street ■ Alexandria, VA 22314-1552 ■ 703/836 2272 Fax 703/684 1921

March 23, 1998

Lori Klabunde, PA-C, President
North Dakota Academy of Physician Assistants
3033 Greenwood Drive
Bismarck, ND 58501

Licensure 27 states

Dear Lori:

By facsimile: 701-222-0848

You had asked for information regarding PAs and DEA registration numbers. As you know, the scenery on this issue has changed during the past 12 months. Here's some history.

In 1993 the federal Drug Enforcement Administration (DEA) established a registration category for midlevel practitioners (defined as PAs, nurse midwives, nurse practitioners, optometrists, and others) authorized by states to prescribe controlled substances. This allowed PAs who were authorized by the state to write prescriptions for controlled substances to register with the DEA. The PA profession was very pleased with this change. We believe that PAs who are prescribers of controlled medications should be governed by the same accountability measures as other prescribers of controlled drugs.

Historically, the DEA has exempted from registration those individuals who are agents or employees of authorized and registered prescribers, allowing them instead to utilize the DEA number of the physician registrant. This "agent exemption" was primarily created for those who administer or dispense controlled substances, and, for example, allows nurses to administer controlled medications without registering with the DEA.

When the DEA created the midlevel practitioner registration category, it interpreted its own regulations to imply that PAs could be exempted from registration as agents of the supervising physician in states in which the law specifically referred to the PA as the physician's agent. Thus, though 26 of the 32 states that allow PAs to prescribe controlled medications have specified that the PA must be a DEA registrant, six states (ND, WY, GA, CA, NE) have allowed PAs to prescribe controlled medications using the DEA registration number of the supervising physician. (In Illinois the regulations to implement PA prescribing of controlled medications are still in the drafting process.) Wyoming, Georgia, and California are evaluating options for changing to DEA registration for PAs.

Recently, the DEA has expressed the view that PAs who are authorized by state law to prescribe controlled medications must register with the DEA. Nearly a year ago we received word that a pharmacy in Georgia had been fined by the DEA for filling a completely legal prescription written by a physician assistant using the supervising physician's DEA number. This prompted the AAPA to seek clarification on the issue from the DEA. We queried the DEA office of chief counsel on the option of the PA utilizing the supervising physician's DEA number when writing a prescription for a controlled medication. In a letter dated May 14, 1997, Robert Walker from the DEA's office of chief counsel stated:

"PAs must have their own individual DEA registrations if they write and sign a controlled substance prescription."

The DEA now is interpreting its regulations to require DEA registration for PA prescribers of controlled medications. The agency exemption has probably always been inappropriate for PAs, but the supervising physician/PA relationship has made this somewhat cloudy until recently.

The concept of agency is commonly used in describing the physician assistant's relationship to the supervising physician. Because PAs only practice as delegated to do so by a supervising physician, the PA is uniformly the agent of the physician.

Requiring PA prescribers of controlled medications to become DEA registrants is very consistent with the federal regulations. §1301.24 CFR Ch. II describes agency. Subsection (a) may make it appear that PAs as "agents" are exempted from registration, however, Subsection (b) conclusively states that PA prescribers of controlled medications cannot be exempted from registration because of agency. The subsections read:

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his business or employment.


(b) An individual practitioner, as defined in section 1304.02 of this chapter who is an agent or employee of another individual practitioner (other than a mid-level practitioner) registered to dispense controlled substances may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself.

Copies of the federal regulations and of Mr. Walker's letter are enclosed.

It appears that all PAs who are authorized by the state to write prescriptions for controlled medications should register with the DEA. Prior to allowing PAs to register, the DEA office of chief counsel reviews the state law and makes a determination on whether or not the PA is eligible for registration. According to conversations with DEA attorneys, it is much easier for the DEA to make this determination if the state law (either statute or regulations) conclusively states that PAs are expected to register if they are delegated prescribers of controlled medications. With this in mind, the wisest course in North Dakota might be for your medical board to adopt a regulation stating that PAs who are authorized to prescribe controlled medications must register with the DEA.

Please feel free to contact me if additional information would be useful.

Sincerely,



Amir Davis, PA-C
Director of State Government Affairs

Encls.

cc: Gretchen Kalzer
Nikolo Gara



U.S. Department of Justice
Drug Enforcement Administration

Washington, D.C. 20537

MAY 14 1997

Ann Davis, PA-C, Director
State Government Affairs
American Academy of Physician Assistants
950 North Washington Street
Alexandria, Virginia 22314-1552

Dear Ms. Davis:

By letter dated April 10, 1997, you requested information from the Drug Enforcement Administration (DEA) regarding the registration process of mid-level practitioners. Specifically, you posed the following question: "If a physician assistant (PA), who is authorized to do so by state law, writes and signs a prescription for a controlled medication, must the PA have his or her own DEA registration number?" The following is DEA's response to your inquiry.

The answer to your question is generally yes; PAs must have their own individual DEA registrations if they write and sign a controlled substance prescription. Title 21 of the Code of Federal Regulations (21 C.F.R.), Section 1306.05 requires that controlled substance prescriptions be signed by the prescribing practitioner. However, Section 1306.05 further permits the secretary or agent to prepare a prescription for the signature of the practitioner. Under this scenario, the agent may not sign the prescription.

The answer regarding whether PAs may apply for individual DEA registrations of course depends upon the authority given to them by the state. As you correctly pointed out in your letter, there is state to state variability regarding the extent to which PAs may handle controlled substances. However, the response to your inquiry may be best further by example:

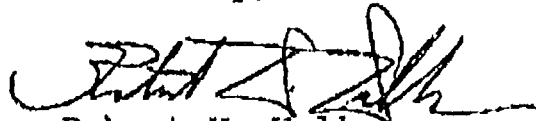
DEA has approved controlled substance registrations for PAs in the State of Colorado in Schedules II through V. Pursuant to Colorado law, physicians may delegate to their PAs controlled

substance authority, subject to the physician's written protocols which specify controlled drugs to be used. In addition, the authority of Colorado PAs to prescribe controlled substances doesn't require the continuous presence of the supervising physician. Using the Colorado model as an example, it is clear that the State has authorized some degree of independent controlled substance authority for its PAs.

DEA will likely approve controlled substance registrations for PAs and other mid-level practitioners if, like Colorado, the authority to prescribe controlled substances has been expressly authorized, and that authority is independent of another DEA registrant. If, on the other hand, the authority to handle controlled substances is derivative of another practitioner, without independent authority to handle these medications, it is likely that DEA would not issue controlled substance registrations in these situations.

I hope the foregoing is responsive to your inquiry. If you have any further questions in this regard, please call me at (202) 307-8010.

Sincerely,



Robert W. Walker
Attorney
Office of Chief Counsel

Testimony for Denise Lorenz, PA-C

North Dakota Senate - Industry, Business and Labor Committee.

January 17, 2001

Good morning Mr. Chairman, and members of the committee. My name is Denise Lorenz. I am a physician assistant, practicing in Hazen, North Dakota, and I am President of the North Dakota Academy of Physician Assistants.

We appreciate the opportunity to speak to you briefly about SB 2141. This legislation is a bill introduced by your committee at the request of the North Dakota Board of Medical Examiners. It contains a minor technical amendment that, if passed, will allow physician assistants practicing in North Dakota to register with the Federal Drug Enforcement Administration, the DEA.

I'd like to give an explanation of why this legislation is necessary. Ten years ago in 1991 the North Dakota legislature passed a bill that allows supervising physicians to delegate the ability to prescribe to physician assistants. This authority includes controlled medications included in Schedules III-V. Schedule III --V includes medications used to treat pain, cough (cough syrups with codeine), and a variety of other disorders. Because some of these drugs have addiction potential they are governed by a special set of legal provisions.

When North Dakota law was written, it stated that the PA was to prescribe medications "in the name of the supervising physician". Under this law the PA used the name and DEA registration number of the supervising physician when writing prescriptions for controlled drugs. All PAs work closely with a supervising physician, and the system has worked well until recently.

Here's what changed. In 1993 the DEA established a registration category for "midlevel practitioners" (defined as physician assistants, nurse midwives, nurse practitioners and others) who are authorized by states to prescribe controlled substances. At the same time, the DEA kept on the books an exemption from registration for those individuals who are agents or employees of authorized and registered prescribers. In 1997, however, the DEA gave the opinion that PAs who write prescriptions for controlled medications must have their own registration number. This opinion makes sense. The goal of the DEA registrations is to track the prescribing of controlled medications. If a physician supervises two PAs, as allowed by North Dakota law, and all three of them use the physician's DEA number this system is less accurate. Having each prescriber use a unique DEA registration number promotes accuracy in tracking.

So, the DEA has decided that PAs who prescribe controlled medications must register. However, current North Dakota law is inconsistent with DEA registration as it specifies that the PA prescribes "in the name of the supervising physician". Because the physician's name is used, the DEA cannot issue the PA a unique registration number.

SB 2141 as presented for your consideration makes a technical change to the PA prescribing statute to allow physician assistants to register with the DEA. The North Dakota Board of Medical Examiners, the board that regulates physician assistants, drafted this legislation. It has the full support of the medical board and of the North Dakota Academy of Physician Assistants. We know of no opposition to this bill.

SB 2141 will allow PAs to comply with federal law. It will improve tracking of controlled medication prescribing. It does not confer any new authority to PAs, nor does it weaken the important bond between the PA and the supervising physician.

I ask for your support of SB 2141. Thank you for the opportunity to speak this morning. I would be happy to answer questions.

Testimony presented by Denise Lorenz, PA-C

Fifty-seventh
Legislative Assembly
Of North Dakota

North Dakota House of Representatives
Industry, Business and Labor Committee

March 5, 2001

Good morning Mr. Chairman and members of the committee. My name is Denise Lorenz. I am a physician assistant, practicing in Hazen, North Dakota, and I am President of the North Dakota Academy of Physician Assistants.

I appreciate the opportunity to speak to you briefly about SB 2141. This legislation is a bill introduced by your committee at the request of the North Dakota Board of Medical Examiners. It contains a minor technical amendment that, if passed, will allow physician assistants practicing in North Dakota to register with the Federal Drug Enforcement Administration, the DEA.

Physician assistants are health care professionals licensed to practice medicine with physician supervision. As part of their comprehensive responsibilities, PAs conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, assist in surgery, and in most states can write prescriptions.

As of October 2000, forty-seven states have enacted laws or regulations that allow supervising physicians to delegate prescriptive authority to PAs. Nearly 85% of these states allow PAs to prescribe controlled medications. Prescribing by PAs, as regulated by the state and by the physician supervisor, can improve patient access to comprehensive care and provide for increased efficiency and cost effectiveness. The ability of the PA to prescribe controlled medications is important to patients and the supervising physician. PAs have commonly been used to extend care to rural and underserved populations.

I'd like to give an explanation of why this legislation is necessary. Ten years ago in 1991 the North Dakota legislature passed a bill that allows supervising physicians to delegate the ability to prescribe to physician assistants. This authority includes controlled medications included in Schedules III-V. Schedule III - V includes medications used to treat pain, cough (cough syrups with codeine), and a variety of other disorders. Because some of these drugs have addiction potential they are governed by a special set of legal provisions.

When North Dakota law was written, it stated that the PA was to prescribe medications "in the name of the supervising physician". Under this law the PA used the name and DEA registration number of the supervising physician when writing prescriptions for controlled drugs. All PAs work closely with a supervising physician, and this system has worked well until recently.

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So, the DEA has decided that PAs who prescribe controlled medications must register. However, current North Dakota law is inconsistent with DEA registration as it specifies that the PA prescribes "in the name of the supervising physician". Because the physician's name is used, the DEA cannot issue the PA a unique registration number.

SB 2141 as presented for your consideration makes a technical change to the PA prescribing statute to allow physician assistants to register with the DEA. The North Dakota Board of Medical Examiners, the board that regulates physician assistants, drafted this legislation. It has the full support of the medical board and of the North Dakota Academy of Physician Assistants. I know of no opposition to this bill.

SB 2141 will allow PAs to comply with federal law. It will improve tracking of controlled medication prescribing. It does not confer any new authority to PAs, nor does it weaken the important bond between the PA and the supervising physician. It will allow for a more effective practice by the supervising physician/PA team.

I ask for your support of SB 2141. Thank you for the opportunity to speak this morning. I would be happy to answer any questions.